

From: James Hamilton [REDACTED]
Sent: 19 August 2020 12:39
To: Hynd JS (James) <James.Hynd@gov.scot>
Cc: [REDACTED]@gov.scot>
Subject: Re: Referral

Dear James

The date of 7 June 2018 was an error. It should have referred to 2 April when the first meeting between Mr Salmond and the First Minister took place. I have corrected this and expanded this part of the letter.

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Best wishes

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Dear James

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James
James Hynd
Head of Cabinet, Parliament and Governance Division

Internal ext [REDACTED]

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Dear James

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The letters should invite a general response. In addition recipients should be asked to deal in particular with specific issues as follows:

First Minister: Details of all contacts with the former First Minister between 16 January 2018, when the first complaint against him was made, and 18 July 2018, when the second telephone conversation took place, and confirmation that there was no contact, direct or indirect, thereafter. Apart from the five contacts already disclosed, the three meetings and two telephone conversations, were there any indirect contacts? In particular, was there a meeting prior to 7 June 2018 between Mr Aberdein and the First Minister, [REDACTED]

In the case of each meeting or contact who initiated it? Who attended, participated, witnessed or was informed about it? What was the purpose of the meeting or contact? What was the First Minister's purpose in participating? What was discussed and who said what?

The First Minister has stated that at the first meeting on 2 April 2018 she explained that she had no role in relation to the investigation or determination of the complaints. In the light of this explanation why did she not thereafter simply decline to discuss the matter further with the former First Minister? What did she see as the purpose of allowing these contacts to continue?

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When did the First Minister inform the Permanent Secretary of these contacts? If she did not do so immediately after the first contact, why did she not do so then?

Did the First Minister ask the Permanent Secretary, or any other civil servant or special adviser, for advice or receive any advice from any such person, in connection with any matters raised in the course of contacts with the former First Minister? If so, when, and what was the import of the advice?

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Permanent Secretary (Ms. Leslie Evans)

She should be asked when she was first informed. What was she told about contacts with and representations on behalf of the former First Minister and when? Was she asked for or did she offer any advice? If so, what did she advise? She should be asked about how the investigation was conducted, procedures, etc. Was there any interference with these by the First Minister or any other person? Was she made aware of any representations by the former First Minister or on his behalf? What does she know about suggestions of mediation apparently put forward by the former First Minister? Did he approach her about this at any time?

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[REDACTED] He should be asked if Mr Aberdein was acting on his behalf and if so what were his instructions. Was he aware that the First Minister had no role in relation to the investigations? Has he any written notes or memoranda?

Mr Aberdein

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James Hamilton
Independent Adviser on the Scottish Ministerial Code

c/o E: James.hynd@gov.scot

Nicola Sturgeon MSP
First Minister
St Andrew's House
Edinburgh
EH1 3DG

[] August 2020

Dear First Minister

SCOTTISH MINISTERIAL CODE: FIRST MINISTER'S SELF-REFERRAL

As you know, I have been appointed as the independent adviser to consider your self-referral under the Ministerial Code. I attach a copy of the Parliamentary answer which sets out the remit for the referral [to be attached].

My purpose in writing is to seek from you a range of information to assist me in preparing my report.

I would be grateful if you would supply me with a general statement about your actions and involvement in the matters covered by my remit. This should include, but not be limited to: an indication of what were the intentions that lay behind your actions and, in particular, the series of contacts that you had with Mr Salmond; the extent to which you considered the application of the requirements of the Ministerial Code in relation to those meetings; whether you are satisfied that you have complied with the requirements of the Code at all times; whether you attempted to bring influence to bear on the ongoing investigation by the Scottish Government of the allegations that had been made under Scottish Government's Procedure for the Handling of Harassment Complaints involving Current or Former Ministers; and, any other information that would assist me in my considerations.

In addition to a general statement, I would welcome your response to a series of specific questions as follows:

1. Details of all contacts you had with Mr Salmond between 16 January 2018, when the first complaint against him was made under the Scottish Government's Procedure for the Handling of Harassment Complaints involving Current or Former Ministers, and 18 July 2018, when your second telephone conversation took place, which, according to your statement to the Scottish Parliament on 8 January 2019, was the last contact you had with Mr Salmond. Can you also please confirm whether there was any contact, direct or indirect, thereafter.
2. Apart from the five contacts (three meetings and two telephone conversations) already disclosed in your statement to Parliament on 8 January 2019, were there any indirect contacts?
 - 2.1. In particular, was there a meeting or meetings prior to your first meeting with Mr Salmond on 2 April 2018 between you or any person acting on your behalf or reporting to you and Geoff Aberdein, Mr Salmond's former chief of staff, or Mr Salmond himself or any other person representing or reporting to him?
 - 2.2. If so, who attended any such meeting or meetings and what was discussed?
 - 2.3. When did you become aware of any such meetings?
3. 
4. In the case of each meeting or contact disclosed in your statement of 8 January 2019, I should be grateful if you would confirm:
 - 4.1. Who initiated each meeting or contact?
 - 4.2. Who attended, participated, witnessed or was informed about each meeting or contact?
 - 4.3. What was the purpose of each meeting or contact?
 - 4.4. What was your purpose in participating in each meeting or contact?
 - 4.5. What was discussed and who said what on each occasion?
 - 4.6. What was the duration of each meeting or contact?
 - 4.7. Was any record of the meeting or contact made?
 - 4.8.
5. You have stated that at the first meeting on 2 April 2018 you explained that you had no role in relation to the investigation or determination of the complaints under the Scottish Government Procedure. In the light of this explanation, can you please advise me why you did not thereafter simply decline to discuss the matter further with the Mr Salmond Minister? What did you see as the purpose of allowing these contacts to continue after the first occasion?
6. When did you inform the Permanent Secretary of these contacts? If you did not do so immediately after the first contact, why did you not do so then?
7. Did you ask the Permanent Secretary, or any other civil servant or special adviser, for advice or receive any advice from any such person, in connection with any matters raised in the course of contacts with the former First Minister? If so, when, and what was the import of the advice? Can you please provide me with copies of any notes, memoranda, etc., concerning or containing any such advice.

More generally, can you please provide me, whether in electronic or physical form, any notes, memoranda, minutes or other records of the meetings disclosed or contained in any communications concerning or describing any of these contacts, including communications to civil servants or special advisers.

It is important that I advise you that information provided to me may be referred to and/or disclosed in my report, which I expect will be published by the Scottish Government in due course. I will take all necessary advice to ensure that my report is consistent with all relevant legal considerations, including any court orders applying to the matters under consideration.

Once I have the material requested above, I expect that it will be necessary to interview you about these matters. Given the current travel restrictions, any meeting will take place remotely.

It would be helpful to have your response to this letter by [4 weeks from date issue]. Please let me know if this deadline is likely to pose a difficulty for you or if you need any clarification about any aspect of my request.

Yours Sincerely

James Hamilton

From: James Hamilton [REDACTED]
Sent: 20 August 2020 16:05
To: [REDACTED]@gov.scot>
Subject: Re: Referral

Hi [REDACTED]

Thank you for your email and it is good to hear from you. I look forward to working with you.

I would be interested in knowing a little more about where the parliamentary enquiry is likely to lead. I am used to the Irish system where many years ago our courts constrained parliamentary enquiries when they held that they could not make findings of fact adverse to the reputation of individuals as this would trespass on the judicial function. Consequently enquiries can hold hearings and examine witnesses but find it difficult to make conclusions of fact. An attempt to amend our Constitution to change this failed in a popular referendum.

I assume your Parliament can make findings of fact but is it likely to do so? I imagine parliamentary enquiries, as in most democracies, tend to become very politicised. Can you give me any sense of what is the balance of political forces and the likelihood that the parliamentary enquiry will arrive at definite conclusions as to what happened? I would just like to have a better sense of where the review I am conducting will fit into the overall scheme of things. Do we have any likely timetable for the parliamentary enquiry to conclude its business?

It would be useful for us to have a brief discussion. I am at a wedding tomorrow so that is not a good day. I could talk to you early next week if that suited. I am available for the rest of today but I don't want to catch you on the hop with very short notice!

Your current programme of work seems appropriate. I don't know if there is anything else that emerged in the Salmond trial of relevance to my terms of reference apart from Mr Aberdeen. I watched Kirsty Warke's BBC 2 programme earlier this week which was of great human interest but apart from Mr Aberdeen's evidence nothing particular struck me that I might need to follow up on.

On the subject of a legal adviser Dame Elish Angiolini might have some ideas as to who might be suitable. What I probably need most is not so much formal legal advice but somebody to bounce ideas off and to guide me away from any legal pitfalls. The Irish legal system is in substance and procedure very similar to the English (with the added constitutional layer) but I am well aware that the Scottish system has many differences from either the English or the Irish and superficial resemblances can sometimes hide more fundamental differences!

Thank you for sending me the link to the parliamentary report.

Best wishes

James Hamilton

On Thu, 20 Aug 2020 at 13:09, wrote:

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Further to James Hynd's email earlier in the week, I wanted to get in touch directly to introduce myself. As James has said, I have agreed to take on the support and secretariat role for your work.

I'm looking forward to working with you, and have been looking through the various background documents to get up to speed and make sure I've understood the key next steps.

At the moment, I am working on the following:

- drafting the remaining letters to witnesses, as previously discussed with James.
- progressing work to identify a suitable legal adviser
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If there is anything else that would be helpful for me to work on at the moment? Also, would it be helpful to have an introductory phone call?

In response to your question on the Parliamentary Committee, the Official Report of the Committee on the Scottish Government Handling of Harassment Complaints can be found at the following link:

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If it would be helpful I can also send a link to the archived video of the Committee session.

Best wishes,

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Room 4N:03
St Andrew's House
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Internal [REDACTED]
[REDACTED]

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To: [REDACTED]@gov.scot>
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Hi [REDACTED]

I have just looked again at the draft letter to Ms Sturgeon.

When I looked again at the attachment to the email I sent you my revised draft seems to have made some formatting changes to the draft prepared by James Hynd, e.g. the dropping of paragraph numbers. This was not intentional on my part. It may be because I work on an Apple Mac so use Pages for word-processing then export to Word before sending the document back. The only changes I intended were the textual ones. I will try sending it again.

Best wishes

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Permanent Secretary (Ms. Leslie Evans)

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[REDACTED] He should be asked if Mr Aberdein was acting on his behalf and if so what were his instructions. Was he aware that the First Minister had no role in relation to the investigations? Has he any written notes or memoranda?

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James Hamilton
Independent Adviser on the Scottish Ministerial Code

c/o E: James.hynd@gov.scot

Nicola Sturgeon MSP
First Minister
St Andrew's House
Edinburgh
EH1 3DG

[] August 2020

Dear First Minister

SCOTTISH MINISTERIAL CODE: FIRST MINISTER'S SELF-REFERRAL

As you know, I have been appointed as the independent adviser to consider your self-referral under the Ministerial Code. I attach a copy of the Parliamentary answer which sets out the remit for the referral [to be attached].

My purpose in writing is to seek from you a range of information to assist me in preparing my report.

I would be grateful if you would supply me with a general statement about your actions and involvement in the matters covered by my remit. This should include, but not be limited to: an indication of what were the intentions that lay behind your actions and, in particular, the series of contacts that you had with Mr Salmond; the extent to which you considered the application of the requirements of the Ministerial Code in relation to those meetings; whether you are satisfied that you have complied with the requirements of the Code at all times; whether you attempted to bring influence to bear on the ongoing investigation by the Scottish Government of the allegations that had been made under Scottish Government's Procedure for the Handling of Harassment Complaints involving Current or Former Ministers; and, any other information that would assist me in my considerations.

In addition to a general statement, I would welcome your response to a series of specific questions as follows:

1. Details of all contacts you had with Mr Salmond between 16 January 2018, when the first complaint against him was made under the Scottish Government's Procedure for the Handling of Harassment Complaints involving Current or Former Ministers, and 18 July 2018, when your second telephone conversation took place, which, according to your statement to the Scottish Parliament on 8 January 2019, was the last contact you had with Mr Salmond. Can you also please confirm whether there was any contact, direct or indirect, thereafter.
2. Apart from the five contacts (three meetings and two telephone conversations) already disclosed in your statement to Parliament on 8 January 2019, were there any indirect contacts?
 - 2.1. In particular, was there a meeting or meetings prior to your first meeting with Mr Salmond on 2 April 2018 between you or any person acting on your behalf or reporting to you and Geoff Aberdein, Mr Salmond's former chief of staff, or Mr Salmond himself or any other person representing or reporting to him?
 - 2.2. If so, who attended any such meeting or meetings and what was discussed?
 - 2.3. When did you become aware of any such meetings?
3. 
4. In the case of each meeting or contact disclosed in your statement of 8 January 2019, I should be grateful if you would confirm:
 - 4.1. Who initiated each meeting or contact?
 - 4.2. Who attended, participated, witnessed or was informed about each meeting or contact?
 - 4.3. What was the purpose of each meeting or contact?
 - 4.4. What was your purpose in participating in each meeting or contact?
 - 4.5. What was discussed and who said what on each occasion?
 - 4.6. What was the duration of each meeting or contact?
 - 4.7. Was any record of the meeting or contact made?
 - 4.8.
5. You have stated that at the first meeting on 2 April 2018 you explained that you had no role in relation to the investigation or determination of the complaints under the Scottish Government Procedure. In the light of this explanation, can you please advise me why you did not thereafter simply decline to discuss the matter further with the Mr Salmond Minister? What did you see as the purpose of allowing these contacts to continue after the first occasion?
6. When did you inform the Permanent Secretary of these contacts? If you did not do so immediately after the first contact, why did you not do so then?
7. Did you ask the Permanent Secretary, or any other civil servant or special adviser, for advice or receive any advice from any such person, in connection with any matters raised in the course of contacts with the former First Minister? If so, when, and what was the import of the advice? Can you please provide me with copies of any notes, memoranda, etc., concerning or containing any such advice.

More generally, can you please provide me, whether in electronic or physical form, any notes, memoranda, minutes or other records of the meetings disclosed or contained in any communications concerning or describing any of these contacts, including communications to civil servants or special advisers.

It is important that I advise you that information provided to me may be referred to and/or disclosed in my report, which I expect will be published by the Scottish Government in due course. I will take all necessary advice to ensure that my report is consistent with all relevant legal considerations, including any court orders applying to the matters under consideration.

Once I have the material requested above, I expect that it will be necessary to interview you about these matters. Given the current travel restrictions, any meeting will take place remotely.

It would be helpful to have your response to this letter by [4 weeks from date issue]. Please let me know if this deadline is likely to pose a difficulty for you or if you need any clarification about any aspect of my request.

Yours Sincerely

James Hamilton

From: James Hamilton [REDACTED]
Sent: 23 August 2020 20:51
To: [REDACTED]@gov.scot>
Subject: Re: Referral

Hi [REDACTED]

Sorry for the delay in replying.

A call at 10.00 or 10.30 am would suit. If that doesn't work for you then some time around 2.00 -2.30 would be equally OK. Basically I am at home all day but I hope to spend some time on my vegetable allotment while the weather stays fine!

The landline, [REDACTED] is usually more reliable than the mobile [REDACTED], but either should work. I will probably have the mobile with me all the time if the landline doesn't work.

Best wishes

James

On Fri, 21 Aug 2020 at 17:23, wrote:
Hi James,

Hope you are enjoying the wedding.

I will look into your questions around the Parliamentary Committee and how the various different investigations fit together, and will get back to you next week with further information.

My diary for Monday is pretty clear, so let me know when would suit you for a call.

Best wishes,

[REDACTED]

From: James Hamilton [REDACTED]
Sent: 20 August 2020 16:05
To: [REDACTED]
Subject: Re: Referral

Hi [REDACTED]

Thank you for your email and it is good to hear from you. I look forward to working with you.

I would be interested in knowing a little more about where the parliamentary enquiry is likely to lead. I am used to the Irish system where many years ago our courts constrained parliamentary enquiries when they held that they could not make findings of fact adverse to the reputation of individuals as this would trespass on the judicial function. Consequently enquiries can hold hearings and examine witnesses but find it difficult to make conclusions of fact. An attempt to amend our Constitution to change this failed in a popular referendum.

I assume your Parliament can make findings of fact but is it likely to do so? I imagine parliamentary enquiries, as in most democracies, tend to become very politicised. Can you give me any sense of what is the balance of political forces and the likelihood that the parliamentary enquiry will arrive at definite conclusions as to what happened? I would just like to have a better sense of where the review I am conducting will fit into the overall scheme of things. Do we have any likely timetable for the parliamentary enquiry to conclude its business?

It would be useful for us to have a brief discussion. I am at a wedding tomorrow so that is not a good day. I could talk to you early next week if that suited. I am available for the rest of today but I don't want to catch you on the hop with very short notice!

Your current programme of work seems appropriate. I don't know if there is anything else that emerged in the Salmond trial of relevance to my terms of reference apart from Mr Aberdeen. I watched Kirsty Warke's BBC 2 programme earlier this week which was of great human interest but apart from Mr Aberdeen's evidence nothing particular struck me that I might need to follow up on.

On the subject of a legal adviser Dame Elish Angiolini might have some ideas as to who might be suitable. What I probably need most is not so much formal legal advice but somebody to bounce ideas off and to guide me away from any legal pitfalls. The Irish legal system is in substance and procedure very similar to the English (with the added constitutional layer) but I am well aware that the Scottish system has many differences from either the English or the Irish and superficial resemblances can sometimes hide more fundamental differences!

Thank you for sending me the link to the parliamentary report.

Best wishes

James Hamilton

On Thu, 20 Aug 2020 at 13:09, [REDACTED]@gov.scot> wrote:
Dear James,

Further to James Hynd's email earlier in the week, I wanted to get in touch directly to introduce myself. As James has said, I have agreed to take on the support and secretariat role for your work.

I'm looking forward to working with you, and have been looking through the various background documents to get up to speed and make sure I've understood the key next steps.

At the moment, I am working on the following:

- drafting the remaining letters to witnesses, as previously discussed with James.
- progressing work to identify a suitable legal adviser
- seeking a transcript of Mr Aberdeen's witness statement to the High Court which discussed matters within the scope of this enquiry

If there is anything else that would be helpful for me to work on at the moment? Also, would it be helpful to have an introductory phone call?

In response to your question on the Parliamentary Committee, the Official Report of the Committee on the Scottish Government Handling of Harassment Complaints can be found at the following link:

<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12746>

If it would be helpful I can also send a link to the archived video of the Committee session.

Best wishes,

[Redacted]

From: James Hamilton [Redacted]
Sent: 19 August 2020 12:39
To: Hynd JS (James) <James.Hynd@gov.scot>
Cc: [Redacted] <[\[Redacted\]@gov.scot](mailto:[Redacted]@gov.scot)>
Subject: Re: Referral

Dear James

The date of 7 June 2018 was an error. It should have referred to 2 April when the first meeting between Mr Salmond and the First Minister took place. I have corrected this and expanded this part of the letter.

I have added two further questions to paragraph 4 as well as a minor correction on the first page.

I attach revised letter with the changes tracked.

I watched on BBC last night some footage of the parliamentary inquiry in which Leslie Evans was giving evidence. I assume a transcript of the inquiry's proceedings will be available. Would it be possible for me to be provided with a copy?

Best wishes

James

On Mon, 17 Aug 2020 at 13:18, <James.Hynd@gov.scot> wrote:
Dear James

As promised, I am now working on the letters you have requested.

Here is a draft of the letter to Ms Sturgeon. I thought it worth sending this now just to test whether this is what you are looking for.

You will see that I am asking for clarification from you regarding one date, 7 June 2018.

I will press on with the other drafts.

I am also pleased to let you know that I now have someone in place to fulfil the secretariat function for you. This is [REDACTED], copied, who is a senior manager within the SG and has been working for me in recent months on matters to do with emergency Coronavirus legislation and guidance. Rebecca will now be reading into the subject and will be able to pick up the support function very soon.

James
James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
Internal ext [REDACTED]
[REDACTED]

From: James Hamilton [REDACTED]
Sent: 14 August 2020 14:14
To: Hynd JS (James) <James.Hynd@gov.scot>
Subject: Referral

Dear James

I refer to our telephone conversation on Tuesday. I confirm that I would like you to prepare letters to go to the key potential witnesses inviting written information and observations on the issues the subject matter of the review. As we discussed I

suggest I might invite a response within four weeks and request the recipients of the letters to indicate whether they can comply with this request.

The letters should invite a general response. In addition recipients should be asked to deal in particular with specific issues as follows:

First Minister: Details of all contacts with the former First Minister between 16 January 2018, when the first complaint against him was made, and 18 July 2018, when the second telephone conversation took place, and confirmation that there was no contact, direct or indirect, thereafter. Apart from the five contacts already disclosed, the three meetings and two telephone conversations, were there any indirect contacts? In particular, was there a meeting prior to 7 June 2018 between Mr Aberdeen and the First Minister, [REDACTED]

In the case of each meeting or contact who initiated it? Who attended, participated, witnessed or was informed about it? What was the purpose of the meeting or contact? What was the First Minister's purpose in participating? What was discussed and who said what?

The First Minister has stated that at the first meeting on 2 April 2018 she explained that she had no role in relation to the investigation or determination of the complaints. In the light of this explanation why did she not thereafter simply decline to discuss the matter further with the former First Minister? What did she see as the purpose of allowing these contacts to continue?

The First Minister should be asked to provide any notes, memoranda, minutes or other records of these meetings or contained in any communications concerning or describing any of these contacts including communications to civil servants or special advisers.

When did the First Minister inform the Permanent Secretary of these contacts? If she did not do so immediately after the first contact, why did she not do so then?

Did the First Minister ask the Permanent Secretary, or any other civil servant or special adviser, for advice or receive any advice from any such person, in connection with any matters raised in the course of contacts with the former First Minister? If so, when, and what was the import of the advice?

The First Minister should be asked to provide any notes, memoranda, etc., concerning or containing any such advice.

The First Minister's Chief of Staff. (Is this Liz Lloyd?)

This person apparently attended the first meeting. She needs to be asked for details of the meeting as above. She also needs to be asked whether she was aware of any other contacts [REDACTED]

[REDACTED] She should be asked for notes, memoranda, etc. as above.

Permanent Secretary (Ms. Leslie Evans)

She should be asked when she was first informed. What was she told about contacts with and representations on behalf of the former First Minister and when? Was she asked for or did she offer any advice? If so, what did she advise? She should be

asked about how the investigation was conducted, procedures, etc. Was there any interference with these by the First Minister or any other person? Was she made aware of any representations by the former First Minister or on his behalf? What does she know about suggestions of mediation apparently put forward by the former First Minister? Did he approach her about this at any time?

The former First Minister

He should be asked similar questions to those for the First Minister concerning the details of the contacts. What was his purpose in contacting the First Minister? What was her response?

He should be asked if Mr Aberdein was acting on his behalf and if so what were his instructions. Was he aware that the First Minister had no role in relation to the investigations? Has he any written notes or memoranda?

Mr Aberdein

If you can do drafts incorporating these questions I will approve them. Please also let me know if there is anything further you think should be asked at this stage. Each letter should indicate that I may wish to revert with further questions, and also that each recipient is invited to inform me of any other matters they consider might be relevant. Finally, please feel free to make any general or particular comments or observations you think might be appropriate. As you are aware I am concerned about the possibility of some matters being hidden under the cloak of legal professional privilege but on reflection I think it better to leave this unless and until it arises.

Best wishes

James

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From: [REDACTED]
Sent: 24 August 2020 17:23
To: transcriptions@scotcourts.gov.uk
Subject: Request for transcript

Dear Sir or Madam,

Further to a telephone enquiry made on 19 August 2020, I would like to request a transcript of court proceedings from Edinburgh High Court.

This is to support the work of James Hamilton, independent advisor, who is leading work on the First Minister's self-referral under the Scottish Ministerial Code, which was announced on 13 January 2019 and resumed in August 2020.

Mr Hamilton is a former Director of Public Prosecutions in Ireland and has been an independent adviser since January 2013.

The remit for the referral is to:

- 1. Review any relevant documentation relating to the meetings and discussions listed above.*
- 2. Interview any Minister or official of the Scottish Government, including Special Advisers, who may have any knowledge of the facts and content of the meetings and discussions, to assess whether the Ministerial Code is engaged and, if so, whether the terms of the Code have been complied with.*
- 3. Interview any relevant person outwith the Scottish Government, including the former First Minister, Alex Salmond, who may have information relating to the facts and content of the meetings and discussions.*
- 4. Determine if there is any evidence that the First Minister attempted to use information discussed during those meetings and discussions to influence the conduct of the investigation being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure.*
- 5. Provide the Deputy First Minister with a report setting out the findings and conclusions with regard to:*
 - i. whether the Ministerial Code is engaged regarding the meetings and discussions;*
 - ii. whether there has been any breach of the Code and the nature of any such breach; and*
 - iii. if a breach has occurred, advice on the appropriate remedy or sanction.*
- 6. The Independent Adviser is further invited to consider and offer views on whether the Ministerial Code might need revision to reflect the terms of the Procedure and the strict limitations it places on the involvement of the First Minister in cases which fall to be considered under the Procedure.*

In order to assist with this work, Mr Hamilton would like to request a transcript of the evidence given by Geoff Aberdein on 18th March 2020 concerning the meeting between Mr Aberdein and the First Minister on 29 March 2018. Would it be possible to provide a transcript of this?

I understand that a fee is chargeable for this service, and that this fee might be affected by who is requesting the transcript. Scottish Government are providing secretariat support to Mr Hamilton, who is acting in his capacity as independent advisor, and I am therefore requesting this transcript on Mr Hamilton's behalf. If it would be helpful to discuss this in more detail please let me know- I am contactable on [REDACTED]

Happy to discuss.

Best wishes,

[REDACTED]

From: [REDACTED]
Sent: 27 August 2020 09:54
To: [REDACTED]@gov.scot>
Subject: RE: Ministerial Code Referral

Yes 9.30?

From: [REDACTED]
Sent: 27 August 2020 09:30
To: [REDACTED]
Subject: RE: Ministerial Code Referral

Hi [REDACTED],

No problem at all. Is the yoga on video conference?!

Would first thing tomorrow morning be ok? I'm speaking to Mr Hamilton tomorrow morning and would like to be able to give an update if possible before then.

Best wishes,

[REDACTED]

From: [REDACTED]
Sent: 27 August 2020 09:25
To: [REDACTED]@gov.scot>
Cc: [REDACTED]
Subject: RE: Ministerial Code Referral

Hi Rebecca. I'm doing a virtual away day with the Division today so won't be around most of the day. Could we make it tomorrow? If its urgent though please let me know and I will fit it around yoga and a talk on Brexit!!

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

From: James Hamilton [REDACTED]
Sent: 01 September 2020 17:52
To: [REDACTED]@gov.scot>
Subject: Re: Referral

Dear [REDACTED],

Thank you for the draft letters which appear to me to be in order subject to the following:

In the salutation I would prefer to address the relevant letters to Ms Lloyd and Ms Evans.

At the end I would be inclined to say that I expect it "may be" rather than "will be" necessary to have an interview.

In the letter to Mr Salmond on the second page the first paragraph beginning "In the case of each meeting" is unnecessary as it is repeated in the next paragraph. I would also enquire whether there were any other meetings or contacts "direct or indirect".

In the letter to the First Minister there is a phrase "decline to discuss the matter with the Mr Salmond Minister". "The" and "Minister" should be deleted.

[REDACTED]

Best wishes

James Hamilton

On Fri, 28 Aug 2020 at 17:20, wrote:
Hi James,

As discussed, please see attached drafts of letters to Mr Salmond, Mr Aberdeen, Liz Lloyd and the Permanent Secretary.

I have also accepted the tracked changes on the letter to the FM and adjusted the formatting. I think the line at the end about the interview would cover the issues we discussed this morning but I could add something more specific to cover this.

I had included a line in each letter requesting that the correspondent provide information in a way that is consistent with the various court orders; I think this may be overly cautious, but wondered about including it to emphasise the need for consideration of the issues around some of this information.

Best wishes,

[REDACTED]

From: James Hamilton [REDACTED]
Sent: 19 August 2020 12:39
To: Hynd JS (James)
Cc: [REDACTED]
Subject: Re: Referral

Dear James

The date of 7 June 2018 was an error. It should have referred to 2 April when the first meeting between Mr Salmond and the First Minister took place. I have corrected this and expanded this part of the letter.

I have added two further questions to paragraph 4 as well as a minor correction on the first page.

I attach revised letter with the changes tracked.

I watched on BBC last night some footage of the parliamentary inquiry in which Leslie Evans was giving evidence. I assume a transcript of the inquiry's proceedings will be available. Would it be possible for me to be provided with a copy?

Best wishes

James

On Mon, 17 Aug 2020 at 13:18, <James.Hynd@gov.scot> wrote:
Dear James

As promised, I am now working on the letters you have requested.

Here is a draft of the letter to Ms Sturgeon. I thought it worth sending this now just to test whether this is what you are looking for.

You will see that I am asking for clarification from you regarding one date, 7 June 2018.

I will press on with the other drafts.

I am also pleased to let you know that I now have someone in place to fulfil the secretariat function for you. This is [REDACTED], copied, who is a senior manager within the SG and has been working for me in recent months on matters to do with emergency Coronavirus legislation and guidance. [REDACTED] will now be reading into the subject and will be able to pick up the support function very soon.

James
James Hynd
Head of Cabinet, Parliament and Governance Division

Room 4N:03
St Andrew's House
Edinburgh
Internal [REDACTED]
[REDACTED]

From: James Hamilton [REDACTED]
Sent: 14 August 2020 14:14
To: Hynd JS (James) <James.Hynd@gov.scot>
Subject: Referral

Dear James

I refer to our telephone conversation on Tuesday. I confirm that I would like you to prepare letters to go to the key potential witnesses inviting written information and observations on the issues the subject matter of the review. As we discussed I suggest I might invite a response within four weeks and request the recipients of the letters to indicate whether they can comply with this request.

The letters should invite a general response. In addition recipients should be asked to deal in particular with specific issues as follows:

First Minister: Details of all contacts with the former First Minister between 16 January 2018, when the first complaint against him was made, and 18 July 2018, when the second telephone conversation took place, and confirmation that there was no contact, direct or indirect, thereafter. Apart from the five contacts already disclosed, the three meetings and two telephone conversations, were there any indirect contacts? In particular, was there a meeting prior to 7 June 2018 between Mr Aberdeen and the First Minister, [REDACTED]
[REDACTED]
[REDACTED]

In the case of each meeting or contact who initiated it? Who attended, participated, witnessed or was informed about it? What was the purpose of the meeting or contact? What was the First Minister's purpose in participating? What was discussed and who said what?

The First Minister has stated that at the first meeting on 2 April 2018 she explained that she had no role in relation to the investigation or determination of the complaints. In the light of this explanation why did she not thereafter simply decline to discuss the matter further with the former First Minister? What did she see as the purpose of allowing these contacts to continue?

The First Minister should be asked to provide any notes, memoranda, minutes or other records of these meetings or contained in any communications concerning or describing any of these contacts including communications to civil servants or special advisers.

When did the First Minister inform the Permanent Secretary of these contacts? If she did not do so immediately after the first contact, why did she not do so then?

Did the First Minister ask the Permanent Secretary, or any other civil servant or special adviser, for advice or receive any advice from any such person, in connection with any matters raised in the course of contacts with the former First Minister? If so, when, and what was the import of the advice?

The First Minister should be asked to provide any notes, memoranda, etc., concerning or containing any such advice.

The First Minister's Chief of Staff. (Is this Liz Lloyd?)

This person apparently attended the first meeting. She needs to be asked for details of the meeting as above. She also needs to be asked whether she was aware of any other contacts

[REDACTED]

[REDACTED] She should be asked for notes, memoranda, etc. as above.

Permanent Secretary (Ms. Leslie Evans)

She should be asked when she was first informed. What was she told about contacts with and representations on behalf of the former First Minister and when? Was she asked for or did she offer any advice? If so, what did she advise? She should be asked about how the investigation was conducted, procedures, etc. Was there any interference with these by the First Minister or any other person? Was she made aware of any representations by the former First Minister or on his behalf? What does she know about suggestions of mediation apparently put forward by the former First Minister? Did he approach her about this at any time?

The former First Minister

He should be asked similar questions to those for the First Minister concerning the details of the contacts. What was his purpose in contacting the First Minister? What was her response

[REDACTED] He should be asked if Mr Aberdein was acting on his behalf and if so what were his instructions. Was he aware that the First Minister had no role in relation to the investigations? Has he any written notes or memoranda?

Mr Aberdein

[REDACTED]

If you can do drafts incorporating these questions I will approve them. Please also let me know if there is anything further you think should be asked at this stage.

Each letter should indicate that I may wish to revert with further questions, and also that each recipient is invited to inform me of any other matters they consider might be relevant. Finally, please feel free to make any general or particular comments or observations you think might be appropriate. As you are aware I am concerned about the possibility of some matters being hidden under the cloak of legal professional privilege but on reflection I think it better to leave this unless and until it arises.

Best wishes

James

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[REDACTED]

[REDACTED]

From: [REDACTED]
Sent: 03 September 2020 18:42
To: James Hamilton [REDACTED]
Subject: RE: Referral

Dear James,

Many thanks for your comments. I have updated the letters to reflect all of your comments- let me know if there is anything that I have missed or that has gone wrong with the formatting or tracked changes.

Would it be helpful to have another catch up to discuss next steps?

Best wishes,

[REDACTED]

From: James Hamilton
Sent: 01 September 2020 17:52
To: [REDACTED]
Subject: Re: Referral

Dear [REDACTED]

Thank you for the draft letters which appear to me to be in order subject to the following:

In the salutation I would prefer to address the relevant letters to Ms Lloyd and Ms Evans.

At the end I would be inclined to say that I expect it "may be" rather than "will be" necessary to have an interview.

In the letter to Mr Salmond on the second page the first paragraph beginning "In the case of each meeting" is unnecessary as it is repeated in the next paragraph. I would also enquire whether there were any other meetings or contacts "direct or indirect".

In the letter to the First Minister there is a phrase "decline to discuss the matter with the Mr Salmond Minister". "The" and "Minister" should be deleted.

In the letter to Mr Aberdeen the reference to meetings with "any civil servant or special adviser" seems too broad and should be qualified by "answerable to or reporting to her".

Best wishes

James Hamilton

On Fri, 28 Aug 2020 at 17:20, <[REDACTED]@gov.scot> wrote:
Hi James,

As discussed, please see attached drafts of letters to Mr Salmond, Mr Aberdeen, Liz Lloyd and the Permanent Secretary.

I have also accepted the tracked changes on the letter to the FM and adjusted the formatting. I think the line at the end about the interview would cover the issues we discussed this morning but I could add something more specific to cover this.

I had included a line in each letter requesting that the correspondent provide information in a way that is consistent with the various court orders; I think this may be overly cautious, but wondered about including it to emphasise the need for consideration of the issues around some of this information.

Best wishes,

[REDACTED]

From: James Hamilton [REDACTED]
Sent: 19 August 2020 12:39
To: Hynd JS (James) <James.Hynd@gov.scot>
Cc: [REDACTED] <[\[REDACTED\]@gov.scot](mailto:[REDACTED]@gov.scot)>
Subject: Re: Referral

Dear James

The date of 7 June 2018 was an error. It should have referred to 2 April when the first meeting between Mr Salmond and the First Minister took place. I have corrected this and expanded this part of the letter.

I have added two further questions to paragraph 4 as well as a minor correction on the first page.

I attach revised letter with the changes tracked.

I watched on BBC last night some footage of the parliamentary inquiry in which Leslie Evans was giving evidence. I assume a transcript of the inquiry's proceedings will be available. Would it be possible for me to be provided with a copy?

Best wishes

James

On Mon, 17 Aug 2020 at 13:18, <James.Hynd@gov.scot> wrote:
Dear James

As promised, I am now working on the letters you have requested.

Here is a draft of the letter to Ms Sturgeon. I thought it worth sending this now just to test whether this is what you are looking for.

First Minister: Details of all contacts with the former First Minister between 16 January 2018, when the first complaint against him was made, and 18 July 2018, when the second telephone conversation took place, and confirmation that there was no contact, direct or indirect, thereafter. Apart from the five contacts already disclosed, the three meetings and two telephone conversations, were there any indirect contacts? In particular, was there a meeting prior to 7 June 2018 between Mr Aberdeen and the First Minister, [REDACTED]

In the case of each meeting or contact who initiated it? Who attended, participated, witnessed or was informed about it? What was the purpose of the meeting or contact? What was the First Minister's purpose in participating? What was discussed and who said what?

The First Minister has stated that at the first meeting on 2 April 2018 she explained that she had no role in relation to the investigation or determination of the complaints. In the light of this explanation why did she not thereafter simply decline to discuss the matter further with the former First Minister? What did she see as the purpose of allowing these contacts to continue?

The First Minister should be asked to provide any notes, memoranda, minutes or other records of these meetings or contained in any communications concerning or describing any of these contacts including communications to civil servants or special advisers.

When did the First Minister inform the Permanent Secretary of these contacts? If she did not do so immediately after the first contact, why did she not do so then?

Did the First Minister ask the Permanent Secretary, or any other civil servant or special adviser, for advice or receive any advice from any such person, in connection with any matters raised in the course of contacts with the former First Minister? If so, when, and what was the import of the advice?

The First Minister should be asked to provide any notes, memoranda, etc., concerning or containing any such advice.

The First Minister's Chief of Staff. (Is this Liz Lloyd?)

This person apparently attended the first meeting. She needs to be asked for details of the meeting as above. She also needs to be asked whether she was aware of any other contacts

[REDACTED]

[REDACTED] She should be asked for notes, memoranda, etc. as above.

Permanent Secretary (Ms. Leslie Evans)

She should be asked when she was first informed. What was she told about contacts with and representations on behalf of the former First Minister and when? Was she asked for or did she offer any advice? If so, what did she advise? She should be asked about how the investigation was conducted, procedures, etc. Was there any interference with these by the First Minister or any other person? Was she made aware of any representations by the former First Minister or on his behalf? What does she know about suggestions of mediation apparently put forward by the former First Minister? Did he approach her about this at any time?

The former First Minister

He should be asked similar questions to those for the First Minister concerning the details of the contacts. What was his purpose in contacting the First Minister? What was her response?

[REDACTED] He should be asked if Mr Aberdein was acting on his behalf and if so what were his instructions. Was he aware that the First Minister had no role in relation to the investigations? Has he any written notes or memoranda?

Mr Aberdein

[REDACTED]

[REDACTED]

If you can do drafts incorporating these questions I will approve them. Please also let me know if there is anything further you think should be asked at this stage. Each letter should indicate that I may wish to revert with further questions, and also that each recipient is invited to inform me of any other matters they consider might be relevant. Finally, please feel free to make any general or particular comments or observations you think might be appropriate. As you are aware I am concerned about the possibility of some matters being hidden under the cloak of legal professional privilege but on reflection I think it better to leave this unless and until it arises.

Best wishes

James

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James Hamilton
Independent Adviser on the Scottish Ministerial Code

c/o E: [REDACTED]

Geoff Aberdein,
c/o
Aberdeen Asset Management Plc,
10, Queen's Terrace,
Aberdeen,
Scotland,
AB10 1YG

[] August 2020

Dear Mr Aberdein,

SCOTTISH MINISTERIAL CODE: FIRST MINISTER'S SELF-REFERRAL

As you may know, I have been appointed as the independent adviser to consider the First Minister's self-referral under the Ministerial Code. I attach a copy of the Parliamentary answer which sets out the remit for the referral [to be attached].

My purpose in writing is to seek your cooperation in my enquiries, and to request from you a range of information to assist me in preparing my report.

I would be grateful if you would supply me with a general statement about your actions and involvement in the matters covered by my remit.

This should include, but not be limited to: an indication of what were the intentions that lay behind your actions and, in particular your involvement in any of the series of contacts between the First Minister and Mr Salmond as set out in my remit; details of any further meeting that you are aware of or participated in; and, any other information that would assist me in my considerations.

In addition to a general statement, I would welcome your response to a series of specific questions as follows:

1. Details of all contacts you had with the First Minister, [REDACTED], [REDACTED], between 16 January 2018, when the first complaint against Mr Salmond was made under the Scottish Government's Procedure for the Handling of Harassment Complaints involving Current or Former Ministers, and 18 July 2018, when a second telephone conversation took place, which, according to the First Minister, was the last contact between the First Minister and Mr Salmond.
2. In the case of each of the meetings or contacts set out in my remit, or any other meetings between the FM and Mr Salmond, in which you had any involvement, I should be grateful if you would confirm:
 - 2.1. Who initiated each meeting or contact?
 - 2.2. Who attended, participated, witnessed or was informed about each meeting or contact?
 - 2.3. What was the purpose of each meeting or contact?
 - 2.4. What was your purpose in participating in each meeting or contact? In what capacity were you at the meeting? Were you acting on Mr Salmond's behalf in some or all of the meetings or contacts? If so, what were your instructions?
 - 2.5. What was discussed and who said what on each occasion?
 - 2.6. What was the duration of each meeting or contact?
 - 2.7. What was the conclusion of each meeting or contact?
 - 2.8. Was any record of the meeting or contact made?

More generally, can you please provide me, whether in electronic or physical form, any notes, memoranda, minutes or other records of the meetings disclosed or contained in any communications concerning or describing any of these contacts, including communications to civil servants or special advisers.

It is important that I advise you that information provided to me may be referred to and/or disclosed in my report, which I expect will be published by the Scottish Government in due course. I will write to you in advance of the publication of the report to inform you of any information to be published. I will take all necessary advice to ensure that my report is consistent with all relevant legal considerations, including any court orders applying to the matters under consideration. You will wish to make sure that information you provide is also consistent with the orders set out by the court.

Once I have the material requested above, I expect that I may wish to invite you to an interview about these matters. Given the current travel restrictions, any meeting will take place remotely.

It would be helpful to have your response to this letter by [4 weeks from date issue]. Please let me know if this deadline is likely to pose a difficulty for you or if you need any clarification about any aspect of my request.

Yours Sincerely

James Hamilton

James Hamilton
Independent Adviser on the Scottish Ministerial Code

c/o E: [REDACTED]

Liz Lloyd,
Chief of Staff to the First Minister,
St Andrew's House
Edinburgh
EH1 3DG

[] August 2020

Dear Ms Lloyd,

SCOTTISH MINISTERIAL CODE: FIRST MINISTER'S SELF-REFERRAL

As you know, I have been appointed as the independent adviser to consider the First Minister's self-referral under the Ministerial Code. I attach a copy of the Parliamentary answer which sets out the remit for the referral [REDACTED]

My purpose in writing is to seek from you a range of information to assist me in preparing my report.

I would be grateful if you would supply me with a general statement about your actions and involvement in the matters covered by my remit. This should include, but not be limited to: an indication of what were the intentions that lay behind your actions and [REDACTED]

[REDACTED] whether you attempted to bring influence to bear on the ongoing investigation by the Scottish Government of the allegations that had been made under Scottish Government's Procedure for the Handling of Harassment Complaints involving Current or Former Ministers; and, any other information that would assist me in my considerations.

In addition to a general statement, I would welcome your response to a series of specific questions as follows:

3. In the case of the first meeting (2 April 2018) disclosed in the First Minister's statement of 8 January 2019, which you are said to have attended, I should be grateful if you would confirm:
4.
 - 4.1. Who initiated each meeting or contact?
 - 4.2. Who attended, participated, witnessed or was informed about each meeting or contact?
 - 4.3. What was the purpose of each meeting or contact?
 - 4.4. What was your purpose in participating in each meeting or contact?
 - 4.5. What was discussed and who said what on each occasion?
 - 4.6. What was the duration of each meeting or contact?
 - 4.7. Was any record of the meeting or contact made?
5. 
6. Were you asked for any advice in relation to the meetings or contacts by the First Minister or the Permanent Secretary, or did you provide any advice in relation to the meetings or contacts?
7. Did you take any action as a result of the meetings or contacts described above? If so, what was this?

More generally, can you please provide me, whether in electronic or physical form, any notes, memoranda, minutes or other records of the meetings disclosed or contained in any communications concerning or describing any of these contacts, including communications to civil servants or special advisers.

It is important that I advise you that information provided to me may be referred to and/or disclosed in my report, which I expect will be published by the Scottish Government in due course. I will take all necessary advice to ensure that my report is consistent with all relevant legal considerations, including any court orders applying to the matters under consideration. You will wish to make sure that information you provide is also consistent with the orders set out by the court.

Once I have the material requested above, I expect that it may be necessary to interview you about these matters. Given the current travel restrictions, any meeting will take place remotely.

It would be helpful to have your response to this letter by  Please let me know if this deadline is likely to pose a difficulty for you or if you need any clarification about any aspect of my request.

Yours Sincerely

James Hamilton

James Hamilton
Independent Adviser on the Scottish Ministerial Code

c/o E: [REDACTED]

Nicola Sturgeon MSP
First Minister
St Andrew's House
Edinburgh
EH1 3DG

[] August 2020

Dear First Minister

SCOTTISH MINISTERIAL CODE: FIRST MINISTER'S SELF-REFERRAL

As you know, I have been appointed as the independent adviser to consider your self-referral under the Ministerial Code. I attach a copy of the Parliamentary answer which sets out the remit for the referral [REDACTED]

My purpose in writing is to seek from you a range of information to assist me in preparing my report.

I would be grateful if you would supply me with a general statement about your actions and involvement in the matters covered by my remit. This should include, but not be limited to: an indication of what were the intentions that lay behind your actions and, in particular, the series of contacts that you had with Mr Salmond; the extent to which you considered the application of the requirements of the Ministerial Code in relation to those meetings; whether you are satisfied that you have complied with the requirements of the Code at all times; whether you attempted to bring influence to bear on the ongoing investigation by the Scottish Government of the allegations that had been made under Scottish Government's Procedure for the Handling of Harassment Complaints involving Current or Former Ministers; and, any other information that would assist me in my considerations.

In addition to a general statement, I would welcome your response to a series of specific questions as follows:

8. Details of all contacts you had with Mr Salmond between 16 January 2018, when the first complaint against him was made under the Scottish Government's Procedure for the Handling of Harassment Complaints involving Current or Former Ministers, and 18 July 2018, when your second telephone conversation took place, which, according to your statement to the Scottish Parliament on 8 January 2019, was the last contact you had with Mr Salmond. Can you also please confirm whether there was any contact, direct or indirect, thereafter.
9. Apart from the five contacts (three meetings and two telephone conversations) already disclosed in your statement to Parliament on 8 January 2019, were there any indirect contacts?
 - 9.1. In particular, was there a meeting or meetings prior to your first meeting with Mr Salmond on 2 April 2018 between you, or any person acting on your behalf or reporting to you, and Geoff Aberdein, Mr Salmond's former chief of staff, or Mr Salmond himself or any other person representing or reporting to him?
 - 9.2. If so, who attended any such meeting or meetings and what was discussed?
 - 9.3. When did you become aware of any such meetings?
10. 
11. In the case of each meeting or contact disclosed in your statement of 8 January 2019, I should be grateful if you would confirm:
 - 11.1. Who initiated each meeting or contact?
 - 11.2. Who attended, participated, witnessed or was informed about each meeting or contact?
 - 11.3. What was the purpose of each meeting or contact?
 - 11.4. What was your purpose in participating in each meeting or contact?
 - 11.5. What was discussed and who said what on each occasion?
 - 11.6. What was the duration of each meeting or contact?
 - 11.7. Was any record of the meeting or contact made?
12. You have stated that at the first meeting on 2 April 2018 you explained that you had no role in relation to the investigation or determination of the complaints under the Scottish Government Procedure. In the light of this explanation, can you please advise me why you did not thereafter simply decline to discuss the matter further with Mr Salmond? What did you see as the purpose of allowing these contacts to continue after the first occasion?
13. When did you inform the Permanent Secretary of these contacts? If you did not do so immediately after the first contact, why did you not do so then?
14. Did you ask the Permanent Secretary, or any other civil servant or special adviser, for advice or receive any advice from any such person, in connection with any matters raised in the course of contacts with the former First Minister? If

so, when, and what was the import of the advice? Can you please provide me with copies of any notes, memoranda, etc., concerning or containing any such advice.

More generally, can you please provide me, whether in electronic or physical form, any notes, memoranda, minutes or other records of the meetings disclosed or contained in any communications concerning or describing any of these contacts, including communications to civil servants or special advisers.

It is important that I advise you that information provided to me may be referred to and/or disclosed in my report, which I expect will be published by the Scottish Government in due course. I will take all necessary advice to ensure that my report is consistent with all relevant legal considerations, including any court orders applying to the matters under consideration. You will wish to make sure that information you provide is also consistent with the orders set out by the court.

Once I have the material requested above, I expect that it may be necessary to interview you about these matters. Given the current travel restrictions, any meeting will take place remotely.

It would be helpful to have your response to this letter by [REDACTED]
Please let me know if this deadline is likely to pose a difficulty for you or if you need any clarification about any aspect of my request.

Yours Sincerely

James Hamilton

James Hamilton
Independent Adviser on the Scottish Ministerial Code

c/o E: [REDACTED]

Alex Salmond,
c/o

■

—

[] August 2020

Dear Mr Salmond,

SCOTTISH MINISTERIAL CODE: FIRST MINISTER'S SELF-REFERRAL

As you may know, I have been appointed as the independent adviser to consider the First Minister's self-referral under the Ministerial Code. I attach a copy of the Parliamentary answer which sets out the remit for the referral [REDACTED]

My purpose in writing is to seek your cooperation in my enquiries, and to request from you a range of information to assist me in preparing my report.

I would be grateful if you would supply me with a general statement about your actions and involvement in the matters covered by my remit.

This should include, but not be limited to: an indication of what were the intentions that lay behind your actions and, in particular, the series of contacts that you had with the First Minister; and, any other information that would assist me in my considerations.

In addition to a general statement, I would welcome your response to a series of specific questions as follows:

15. Details of all contacts you, or anyone representing you, had with the First Minister or any civil servant or special advisor between 16 January 2018, when the first complaint was made under the Scottish Government's Procedure for the Handling of Harassment Complaints involving Current or Former Ministers, and 18 July 2018, when a second telephone conversation took place, which, according to the First Minister, was the last contact between the First Minister and yourself. Could you also provide details of the purpose of your communication with the First Minister?
16. In the case of each of the meetings or contacts set out in my remit, or any other meetings or contacts between the FM and yourself, whether direct or indirect, I should be grateful if you would confirm:
 - 16.1. Who initiated each meeting or contact?
 - 16.2. Who attended, participated, witnessed or was informed about each meeting or contact?
 - 16.3. What was the purpose of each meeting or contact?
 - 16.4. What was your purpose in participating in each meeting or contact? In what capacity were you at the meeting?
 - 16.5. What was discussed and who said what on each occasion?
 - 16.6. What was the duration of each meeting or contact?
 - 16.7. What was the conclusion of each meeting or contact?
 - 16.8. Was any record of the meeting or contact made?
17. More generally, can you please provide me, whether in electronic or physical form, any notes, memoranda, minutes or other records of the meetings disclosed or contained in any communications concerning or describing any of these contacts, including communications between yourself and Mr Aberdeen.
18. What was your understanding of the role of the First Minister in respect of the investigations into the complaints made?

It is important that I advise you that information provided to me may be referred to and/or disclosed in my report, which I expect will be published by the Scottish Government in due course. I will take all necessary advice to ensure that my report is consistent with all relevant legal considerations, including any court orders applying to the matters under consideration. You will wish to make sure that information you provide is also consistent with the orders set out by the court.

Once I have the material requested above, I expect that I may wish to invite you to an interview you about these matters. Given the current travel restrictions, any meeting will take place remotely.

It would be helpful to have your response to this letter by [REDACTED]
Please let me know if this deadline is likely to pose a difficulty for you or if you need any clarification about any aspect of my request.

Yours Sincerely

James Hamilton

James Hamilton
Independent Adviser on the Scottish Ministerial Code

c/o E: [REDACTED]

Lesley Evans
Permanent Secretary
St Andrew's House
Edinburgh
EH1 3DG

—

[] August 2020

Dear Ms Evans,

SCOTTISH MINISTERIAL CODE: FIRST MINISTER'S SELF-REFERRAL

As you know, I have been appointed as the independent adviser to consider the First Minister's self-referral under the Ministerial Code. I attach a copy of the Parliamentary answer which sets out the remit for the referral [REDACTED]

My purpose in writing is to seek from you a range of information to assist me in preparing my report.

I would be grateful if you would supply me with a general statement about your actions and involvement in the matters covered by my remit. This should include, but not be limited to: an indication of what were the intentions that lay behind your actions; whether you were aware of any attempt by the First Minister, Mr Salmond, or any other party, to bring influence to bear on the ongoing investigation by the Scottish Government of the allegations that had been made under Scottish Government's Procedure for the Handling of Harassment Complaints involving Current or Former Ministers; and, any other information that would assist me in my considerations.

In addition to a general statement, I would welcome your response to a series of specific questions as follows:

19. In her statement to Parliament on 8 January 2019, the First Minister has disclosed five contacts (three meetings and two telephone conversations) with Mr Salmond. When were you first informed of the contacts between the First Minister and Mr Salmond, and any representations to the First Minister, or any civil servant or special advisor, made on behalf of Mr Salmond?
20. What information was provided to you about the contacts and meetings between the First Minister and Mr Salmond, and any representations made on Mr Salmond's behalf?
21. Did you, or any other civil servant or special adviser, provide advice to the First Minister on contacts with or representations received from Mr Salmond? If so, when was this advice provided and what was the content of this advice. Can you please provide me with copies of any notes, memoranda, etc., concerning or containing any such advice.
22. How was the investigation into the complaints against Mr Salmond conducted? What procedures were followed and applied? What was the role of the First Minister in relation to the investigation? Was there any involvement from the First Minister, or any other person acting on behalf of the First Minister, in the investigation? Were there any representations received, either directly or indirectly, from Mr Salmond or anyone acting on his behalf?

More generally, can you please provide me, whether in electronic or physical form, any notes, memoranda, minutes or other records of the meetings disclosed or contained in any communications concerning or describing any of these contacts, including communications to civil servants or special advisers.

It is important that I advise you that information provided to me may be referred to and/or disclosed in my report, which I expect will be published by the Scottish Government in due course. I will take all necessary advice to ensure that my report is consistent with all relevant legal considerations, including any court orders applying to the matters under consideration. You will wish to make sure that information you provide is also consistent with the orders set out by the court.

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It would be helpful to have your response to this letter by [REDACTED]
Please let me know if this deadline is likely to pose a difficulty for you or if you need any clarification about any aspect of my request.

Yours Sincerely

James Hamilton

From: James Hamilton [REDACTED]
Sent: 04 September 2020 09:22
To: [REDACTED]@gov.scot>
Subject: Re: Referral

Dear [REDACTED]

The letters to Mr Aberdeen, Mr Salmond, Ms Evans and the First Minister appear to me to be in order. [REDACTED]

It would be useful to have a discussion. I could be free this morning at 10.00 am. Otherwise we could fix a time in the afternoon. I am on grandparent duty in the afternoon but can probably manage a brief escape!

Best wishes

James

On Thu, 3 Sep 2020 at 18:41, wrote:
Dear James,

Many thanks for your comments. I have updated the letters to reflect all of your comments- let me know if there is anything that I have missed or that has gone wrong with the formatting or tracked changes.

Would it be helpful to have another catch up to discuss next steps?

Best wishes,

[REDACTED]

From: James Hamilton [REDACTED]
Sent: 01 September 2020 17:52
To: [REDACTED]
Subject: Re: Referral

Dear [REDACTED]

Thank you for the draft letters which appear to me to be in order subject to the following:

In the salutation I would prefer to address the relevant letters to Ms Lloyd and Ms Evans.

At the end I would be inclined to say that I expect it "may be" rather than "will be" necessary to have an interview.

In the letter to Mr Salmond on the second page the first paragraph beginning "In the case of each meeting" is unnecessary as it is repeated in the next paragraph. I would also enquire whether there were any other meetings or contacts "direct or indirect".

In the letter to the First Minister there is a phrase "decline to discuss the matter with the Mr Salmond Minister". "The" and "Minister" should be deleted.

[REDACTED]

Best wishes

From: James Hamilton [REDACTED]
Sent: 04 September 2020 09:22
To: [REDACTED]@gov.scot>
Subject: Re: Referral

Dear [REDACTED]

The letters to Mr Aberdeen, Mr Salmond, Ms Evans and the First Minister appear to me to be in order. [REDACTED]

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Would it be helpful to have another catch up to discuss next steps?

Best wishes,

[REDACTED]

From: James Hamilton [REDACTED]
Sent: 01 September 2020 17:52
To: [REDACTED]
Subject: Re: Referral

Dear [REDACTED],

Thank you for the draft letters which appear to me to be in order subject to the following:

In the salutation I would prefer to address the relevant letters to [REDACTED] Ms Evans.

At the end I would be inclined to say that I expect it "may be" rather than "will be" necessary to have an interview.

James Hamilton

On Fri, 28 Aug 2020 at 17:20, [REDACTED]@gov.scot> wrote:
Hi James,

As discussed, please see attached drafts of letters to Mr Salmond, Mr Aberdeen, Liz Lloyd and the Permanent Secretary.

I have also accepted the tracked changes on the letter to the FM and adjusted the formatting. I think the line at the end about the interview would cover the issues we discussed this morning but I could add something more specific to cover this.

I had included a line in each letter requesting that the correspondent provide information in a way that is consistent with the various court orders; I think this may be overly cautious, but wondered about including it to emphasise the need for consideration of the issues around some of this information.

Best wishes,

[REDACTED]

From: James Hamilton [REDACTED]
Sent: 19 August 2020 12:39
To: Hynd JS (James) <James.Hynd@gov.scot>
Cc: [REDACTED] <[\[REDACTED\]@gov.scot](mailto:[REDACTED]@gov.scot)>
Subject: Re: Referral

Dear James

The date of 7 June 2018 was an error. It should have referred to 2 April when the first meeting between Mr Salmond and the First Minister took place. I have corrected this and expanded this part of the letter.

I have added two further questions to paragraph 4 as well as a minor correction on the first page.

I attach revised letter with the changes tracked.

I watched on BBC last night some footage of the parliamentary inquiry in which Leslie Evans was giving evidence. I assume a transcript of the inquiry's proceedings will be available. Would it be possible for me to be provided with a copy?

Best wishes

James

On Mon, 17 Aug 2020 at 13:18, <James.Hynd@gov.scot> wrote:
Dear James

As promised, I am now working on the letters you have requested.

Here is a draft of the letter to Ms Sturgeon. I thought it worth sending this now just to test whether this is what you are looking for.

You will see that I am asking for clarification from you regarding one date, 7 June 2018.

I will press on with the other drafts.

I am also pleased to let you know that I now have someone in place to fulfil the secretariat function for you. This is Rebecca Whyte, copied, who is a senior manager within the SG and has been working for me in recent months on matters to do with emergency Coronavirus legislation and guidance. Rebecca will now be reading into the subject and will be able to pick up the support function very soon.

James
James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
Internal ext [REDACTED]

From: James Hamilton [REDACTED]
Sent: 14 August 2020 14:14
To: Hynd JS (James) <James.Hynd@gov.scot>
Subject: Referral

Dear James

I refer to our telephone conversation on Tuesday. I confirm that I would like you to prepare letters to go to the key potential witnesses inviting written information and observations on the issues the subject matter of the review. As we discussed I suggest I might invite a response within four weeks and request the recipients of the letters to indicate whether they can comply with this request.

The letters should invite a general response. In addition recipients should be asked to deal in particular with specific issues as follows:

First Minister: Details of all contacts with the former First Minister between 16 January 2018, when the first complaint against him was made, and 18 July 2018, when the second telephone conversation took place, and confirmation that there was no contact, direct or indirect, thereafter. Apart from the five contacts already disclosed, the three meetings and two telephone conversations, were there any indirect contacts? In particular, was there a meeting prior to 7 June 2018 between Mr Aberdein and the First Minister. [REDACTED]

In the case of each meeting or contact who initiated it? Who attended, participated, witnessed or was informed about it? What was the purpose of the meeting or contact? What was the First Minister's purpose in participating? What was discussed and who said what?

The First Minister has stated that at the first meeting on 2 April 2018 she explained that she had no role in relation to the investigation or determination of the complaints. In the light of this explanation why did she not thereafter simply decline to discuss the matter further with the former First Minister? What did she see as the purpose of allowing these contacts to continue?

The First Minister should be asked to provide any notes, memoranda, minutes or other records of these meetings or contained in any communications concerning or describing any of these contacts including communications to civil servants or special advisers.

When did the First Minister inform the Permanent Secretary of these contacts? If she did not do so immediately after the first contact, why did she not do so then?

Did the First Minister ask the Permanent Secretary, or any other civil servant or special adviser, for advice or receive any advice from any such person, in connection with any matters raised in the course of contacts with the former First Minister? If so, when, and what was the import of the advice?

The First Minister should be asked to provide any notes, memoranda, etc., concerning or containing any such advice.

The First Minister's Chief of Staff. (Is this Liz Lloyd?)

This person apparently attended the first meeting. She needs to be asked for details of the meeting as above. She also needs to be asked whether she was aware of any other contacts

[REDACTED]

[REDACTED] She should be asked for notes, memoranda, etc. as above.

Permanent Secretary (Ms. Leslie Evans)

She should be asked when she was first informed. What was she told about contacts with and representations on behalf of the former First Minister and when? Was she asked for or did she offer any advice? If so, what did she advise? She should be asked about how the investigation was conducted, procedures, etc. Was there any interference with these by the First Minister or any other person? Was she made aware of any representations by the former First Minister or on his behalf? What does she know about suggestions of mediation apparently put forward by the former First Minister? Did he approach her about this at any time?

The former First Minister

He should be asked similar questions to those for the First Minister concerning the details of the contacts. What was his purpose in contacting the First Minister? What was her response?

[REDACTED] He should be asked if Mr Aberdein was acting on his behalf and if so what were his instructions. Was he aware that the First Minister had no role in relation to the investigations? Has he any written notes or memoranda?

Mr Aberdein

[REDACTED]

[REDACTED]

If you can do drafts incorporating these questions I will approve them. Please also let me know if there is anything further you think should be asked at this stage. Each letter should indicate that I may wish to revert with further questions, and also that each recipient is invited to inform me of any other matters they consider might be relevant. Finally, please feel free to make any general or particular comments or observations you think might be appropriate. As you are aware I am concerned about the possibility of some matters being hidden under the cloak of legal professional privilege but on reflection I think it better to leave this unless and until it arises.

Best wishes

James

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From: Lloyd E (Elizabeth) <Elizabeth.Lloyd@gov.scot>
Sent: 09 October 2020 19:33
To: [REDACTED]@gov.scot>
Subject: RE: Correspondence for James Hamilton

[REDACTED]

Please find statement attached. I have italicised areas connected to my letter of yesterday, though there are connections with other sections, which will I expect be evident to Mr Hamilton.

As before, if it would be helpful to provide more information on that aspect, I am happy to speak directly to Mr Hamilton.

Best wishes

Liz

Elizabeth Lloyd
Chief of Staff to the First Minister
St Andrew's House
Regent Road
Edinburgh EH1 3DG
Tel: [REDACTED]
Mobile: [REDACTED]
Elizabeth.Lloyd@gov.scot

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From: [REDACTED]@gov.scot>
Sent: 08 October 2020 18:10
To: Lloyd E (Elizabeth) <Elizabeth.Lloyd@gov.scot>
Subject: RE: Correspondence for James Hamilton

Dear Liz,

Many thanks for sending this. I will draw it to Mr Hamilton's attention. We have a call scheduled for tomorrow 1pm, and I should be able to confirm after that if Mr Hamilton wishes to make any comments on or suggest adjustments to the approach you suggest.

Happy to discuss.

Best wishes,

[REDACTED]

From: Lloyd E (Elizabeth) <Elizabeth.Lloyd@gov.scot>
Sent: 08 October 2020 17:14
To: [REDACTED] <[\[REDACTED\]@gov.scot](mailto:[REDACTED]@gov.scot)>
Subject: Correspondence for James Hamilton

[REDACTED]

Please find attached correspondence and accompanying document for Mr Hamilton's attention. It would be my intention to provide my full statement tomorrow, however I'd be grateful if you could draw the attached to his attention prior to that. The attached should be treated as private correspondence.

Regards

Liz

Elizabeth Lloyd
Chief of Staff to the First Minister
St Andrew's House
Regent Road
Edinburgh EH1 3DG
Tel: [REDACTED]
Mobile: [REDACTED]
Elizabeth.Lloyd@gov.scot

Please note Scottish Ministers, Special advisers and the Permanent Secretary to the Scottish Government are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot for information.

Mr Hamilton,

Please find below, brief answers to your specific questions and an accompanying general statement. I have addressed questions 2.5, 3 and 4 in my general statement.

My statement also expands on the points below, whilst also focussing on matters concerning the ministerial code.

[REDACTED]

I hope the following statement addresses all the questions you have asked, but would be happy to provide any clarification or further information you require.

General Statement

As a Special Adviser I am able to engage on ministers behalf in what would for permanent civil servants be political discussions. In particular this allows party liaison and attendance at party meetings. As Chief of Staff I advise the First Minister both on government policy and on political matters. [REDACTED]

[REDACTED]

Before detailing the actions I took, my role and the consideration given to aspects of the ministerial code, I can confirm that I had no discussion and provided no advice, written or oral, to the Permanent Secretary on the meetings or contacts considered within your remit. I discussed some points with the First Minister, and it could be said those discussions included the provision of oral advice, but provided no written advice.

In addition I can confirm that I took no action within government in relation to these matters, *with the exception of making SG counsel aware of them during the period of the judicial review*, and did not seek to bring any influence to bear on the Scottish Government investigation into complaints of sexual harassment in relation to Mr Salmond, rather it was a determination to ensure I did not even inadvertently influence the investigation or compromise it's integrity that has led to questions being raised under 4.22 and 4.23 of the ministerial code.

I can also confirm that prior to the conclusion of the investigation into Mr Salmond I was not informed of the complaints or the investigation by Scottish Government officials and had no contact with either of the complainants. At the conclusion of the investigation I was made aware of the police referral, and the intention to issue a media statement, prior to Mr Salmond intimating legal proceedings against the Government and from memory threatening legal proceedings against the First Minister.

In relation to the meetings and contacts that are the subject of the self-referral, *I was present on* [REDACTED] April 2nd 2018, I was in the room with the First Minister for the duration of the phonecall on April 23rd and heard her contribution in full, and parts of Mr Salmond's contribution. I briefly interrupted the conversation on the 7th June, in order to advise the First Minister that her next engagement was waiting, and though I was not present, the First Minister made me aware of the content of her discussions on the 14th July and 18th July with Mr Salmond. I am not aware of any other contacts between the First Minister and Mr Salmond (beyond those published alongside her evidence to the Scottish Parliament Committee) or the First Minister and Mr Aberdeen.

In relation to the meeting of the 2nd April, it was attended by myself and the First Minister at her personal address. Mr Salmond attended, with Mr Aberdeen and an individual who was acting as a legal adviser to Mr Salmond.. The legal adviser had not been expected to attend, and it was only as Mr Aberdeen and Mr Salmond were due to arrive that Mr Aberdeen informed me that they would be joining them.

The individual was well known to both myself and the First Minister through longstanding political and personal connections, and I was aware he was regularly called on to provide informal advice to Mr Salmond, particularly when he faced legal or political difficulties.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Given this was a political and personal discussion it was organised so as not to require the use of government resources, which led to it taking place at the First Minister's personal home.

As Mr Aberdein indicated he would be accompanying Mr Salmond, and as it was clear Mr Salmond had an issue to discuss that would have political consequences, I considered it appropriate that I attend. I also had some concerns as to what Mr Salmond might want from the meeting. I had only ever known Mr Salmond to be someone who expected others to solve problems for him, and if he was in difficulty I suspected he might make requests of the First Minister and wanted to ensure she had advice.

The discussion on 2nd April took place in two parts. On arrival Mr Salmond asked to speak privately to the First Minister. During this time, Mr Aberdein and Mr Salmond's legal adviser showed me a copy of a letter from the Permanent Secretary and annex detailing complaints against Mr Salmond. They retained the copy of the letter and annex.

[REDACTED]

[REDACTED]

[REDACTED]



I made no record of this meeting. Following its conclusion, I remained briefly with the FM and we discussed whether we had an obligation to report it to the Permanent Secretary or record it under the ministerial code. Whilst it did not seem to me that the content was subject to the code, as the conversation had largely focussed on party matters and personal wellbeing, and Mr Salmond had not told the First Minister anything that the government did not know, but had rather shared with the First Minister information the government had given him, the more relevant question seemed to be whether we should inform the Permanent Secretary.

Having had some limited involvement with the development of the procedure I understood that it specifically did not provide for a First Minister to be informed of complaints against a former minister because there was no legitimate reason to share that information, but also because it ensured that no investigation or outcome could be considered by complainants to be influenced by political interests. I understood this position had been taken to build confidence amongst employees in the independence of the system. Whilst I had no doubt the Permanent Secretary would be independent in her duties, it seemed to me that there was more risk to the integrity and confidentiality of the investigation whether real or perceived from informing the Permanent Secretary of our awareness, than of not doing so.

Equally whilst I didn't consider it to fall under 4.22 or 4.23 of the code, reflecting on it now, I do not know how it would have been possible to report under the current system, without jeopardising the confidentiality of the investigation. Not only would a subject matter have been required, but engagement between Mr Salmond and the First Minister would at that time have attracted public scrutiny, which in generating questions as to the purpose of the meeting, would again have either put the confidentiality of the investigation at risk, or put the First Minister in a position of having to give a less than frank response if asked what the meeting was about, in the interests of protecting that confidentiality

My judgement, in relation to informing the Permanent Secretary, changed when Mr Salmond continued to contact the First Minister and made explicit asks and implicit threats as well as informing her of prospective legal action.

On the evening of 23rd April the First Minister took a call from Mr Salmond in her private study in Bute House in the evening of the 23rd, shortly before attending a dinner engagement. I was in the study throughout and heard her contributions as well as some of his. Mr Salmond was asking the First Minister to tell the Permanent Secretary that she knew of the investigation in order to encourage the Permanent Secretary to agree to his request for mediation. The First Minister was firm that she would not do so. This conversation supported the earlier decision not to tell the Permanent Secretary.

On or around the 4th or 5th of June, the First Minister showed me a message she had received from Mr Salmond which appeared to indicate that he intended to take legal

action against the government. Having worked around Mr Salmond over a number of years, I felt the message had a threatening tone which I recognised and was intended in my view to pressure the First Minister into taking action to in some way suppress or block the inquiry and prevent it concluding. The message also misrepresented the April 2nd meeting.

The First Minister indicated that she thought that having been informed of potential legal action she had a duty to share that with the government. I also felt that given the tone of the communication and the misrepresentation within it, that anything other than informing the Permanent Secretary, could at a later date have led to an undermining of the confidence in the investigation. We again discussed recording the meetings with private office for reporting under the Ministerial code, but given the same confidentiality risk remained and that the First Minister had decided to inform the Permanent Secretary, I felt that all necessary and practical action had been taken. The letter, as far as I am aware, was held by the Permanent Secretary's office.

I did not attend the meeting on 7th June in Aberdeen, which I understood was to inform Mr Salmond that the Permanent Secretary had been informed of the contact, and to re-iterate that the First Minister would not make any requests of her in relation to the investigation. I arrived at the hotel once the conversation was underway, but interrupted the meeting which I do not believe was long as the First Minister had informed me that he was running late, to remind the First Minister of her next engagement. I was in Aberdeen to attend party conference as permitted of Special Advisers.

The First Minister reported to me that he had sought to raise the matter of a Judicial Review and push for her to intervene and that she had, as she had indicated she would, told him that she had informed the Permanent Secretary of his contact and would not act on his behalf in any way.

Shortly after conference, I asked the First Minister if she had informed the Permanent Secretary of the conversation and she indicated that she had.

I was not present at the meeting on the 14th July or call on the 18th July,

I had approached Mr Aberdeen the previous week to ask if he knew if the investigation was coming to an end. My motivation was that I knew the First Minister was considering going on holiday and if it was going to conclude and Mr Salmond take any action, I felt she would not have wanted to be out of the country given the potential for party political ramifications. He indicated that he didn't know and that Mr Salmond was seeking arbitration. [REDACTED]

Following the meeting on the 14th July, the First Minister told me that she was concerned that while she had had no involvement, Mr Salmond had formed an inaccurate impression that she was in some way blocking his request for arbitration, and could not accept that the First Minister was not acting as he wanted her to. My understanding is that the First Minister corrected that view and again informed the Permanent Secretary. My understanding of the call on the 18th was to try to end any discussion of this issue on a more amicable basis.

In relation to the reporting and recording of information, I have set out above the consideration, advice and decisions made regarding reporting under the ministerial code and reporting matters to the Permanent Secretary. I do not believe that there were any other appropriate options available to the First Minister or myself, if we were to both protect the confidentiality of the investigation and avoid compromising or even unwittingly appearing to compromise its integrity.

On becoming aware that Mr Salmond had issued a statement confirming the fact of the investigation to the media in August 2018, there was no hesitation in addressing the fact that there had been contact with Mr Salmond.

This matter had already been recorded with the Permanent Secretary at the first point at which, in my view, on the balance of risk to the investigation process, it became appropriate to do so.

In responding to Mr Salmond's confirmation of the investigation, the First Minister volunteered in a media interview in August 2018 that she had been made aware of the complaints by him earlier in the year. She was under no pressure to do so. I supported her decision to do that, and when asked by the First Minister shortly before the interview, when the meeting was, I recalled it as being Easter Monday, the 2nd April.

I subsequently briefed, with the First Minister's endorsement, Scottish Government counsel in October 2018 on the facts of the First Minister's engagement with Mr Salmond [REDACTED]

The First Minister also pro-actively set out, with my support, the contact she had had with Mr Salmond to Parliament in January 2019 following the conclusion of the Judicial Review, a decision which led to this referral. Again, she was under no pressure to do that, but we both considered it right that whilst the meetings were personal and political in nature, there should be transparency around them, despite for the reasons I have set out above, not considering that recording was required and not having, at the time, a confidential means of doing so without compromising the integrity of the process.

I hope this statement is of assistance to you, and stand ready to address any further queries you may have.

Liz Lloyd

Re: Geoff Aberdeen- updated correspondence for comment

From: James Hamilton [REDACTED]
To: [REDACTED]@gov.scot>
Date: Mon, 09 Nov 2020 17:29:34 +0000

We'll cross that bridge if we come to it!

On Mon, 9 Nov 2020 at 17:27, wrote:

Hi James,

Many thanks, I will issue it shortly.

I agree there may be some handling difficulties if it proves, for whatever reason, that information that was very significant to developing the report cannot be made public.

Best wishes,

[REDACTED]

From: James Hamilton [REDACTED] >
Sent: 09 November 2020 16:32
To: [REDACTED]
Subject: Re: Geoff Aberdeen- updated correspondence for comment

Hi [REDACTED]

I think that is fine. It probably doesn't need to be run past Mr Ross again.

Thinking further about our conversation this morning I am wondering about the risk of ending up with a report that cannot be published...

James

On Mon, 9 Nov 2020 at 15:18, <[REDACTED]@gov.scot> wrote:

Hi James,

As discussed, please see attached updated letter to Mr Aberdeen.

Best wishes,

[REDACTED]

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Geoff Aberdeen- updated correspondence for comment

From: [REDACTED]@gov.scot>
To: James Hamilton [REDACTED]>
Date: Mon, 09 Nov 2020 15:18:21 +0000
Attachments: Letter to Mr Aberdeen updated.docx (17.14 kB)

Hi James,

As discussed, please see attached updated letter to Mr Aberdeen.

Best wishes,

[REDACTED]

Dear Mr Aberdein,

Thank you for your email. I can confirm that Mr Hamilton has received your submission.

Mr Hamilton has sought information from witnesses for the purposes of fulfilling his task of reporting on the questions referred to him by the First Minister.

He will therefore be preparing a report for publication, and relevant information included in submissions will be included in or referred to in that report as appropriate. Mr Hamilton will also seek to ensure that the report is consistent with the relevant court orders on these matters.

If you are in a position to identify any particular material which you consider ought to be kept confidential it would be helpful.

Please let me know if you need any more information.

Best wishes,



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Attachments area

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letter from James Hamilton to the First Minister

From: Somers J (John) <john.somers@gov.scot>
To: [REDACTED]@gov.scot>
Date: Mon, 14 Sep 2020 14:34:43 +0000

Dear [REDACTED]

Today I have received a letter to the First Minister from James Hamilton in relation to *the Scottish Ministerial Code: First Minister's self-referral*.

This email is to confirm receipt. I will pass the letter to the First Minister.

Best, John

John Somers
Principal Private Secretary to the First Minister
Scottish Government

Work: [REDACTED]
Mob: [REDACTED]



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From: [REDACTED] [REDACTED]@gov.scot>

Sent: 02 October 2020 15:07

To: [REDACTED]@gov.scot>

Subject: RE: For comment - Ministerial code referral- submission on legal advice

Hi [REDACTED],

No that should be fine – I don't think my mailbox could handle it right now!

If it's a ministerial appointment there's no issues as that sits out with procurement and I imagine the letter sets out roles/ responsibilities etc.

Have a nice weekend when it comes.

[REDACTED]

From: [REDACTED]

Sent: 02 October 2020 15:00

To: [REDACTED]

Subject: RE: For comment - Ministerial code referral- submission on legal advice

Hi [REDACTED],

Many thanks. The appointment is a ministerial one I think- I've got the appointment letter somewhere if it would be helpful to share it? I had to move it out of my mailbox due to size but I will have filed it somewhere!

Best wishes,

[REDACTED]

From: [REDACTED]@gov.scot>

Sent: 02 October 2020 14:19

To: [REDACTED]@gov.scot>

Subject: RE: For comment - Ministerial code referral- submission on legal advice

Hi [REDACTED],

Thanks for this – I don't have anything to add. Can I ask how Mr Hamilton was appointed please? Apologies if you have already told me this! I just wanted to know whether it was a service contract or ministerial appointment to make sure there are appropriate terms and conditions in place (which I'm sure there are).

Thanks,

[REDACTED]

From: [REDACTED]@gov.scot>

Sent: 02 October 2020 13:15

To: [REDACTED]@gov.scot>

Subject: RE: For comment - Ministerial code referral- submission on legal advice

Hi [REDACTED],

No problem at all, I got a bit distracted by the Covid legislation bit of my job so had lost focus on progressing this!

Thanks for looking at this. I've attached the file, happy to discuss.

Best wishes,

[REDACTED]

From: [REDACTED]@gov.scot>

Sent: 02 October 2020 12:59

To: [REDACTED]@gov.scot>; [REDACTED]

[REDACTED]

Subject: RE: For comment - Ministerial code referral- submission on legal advice

Hi [REDACTED],

Apologies I was on leave when the first email came through and thought it was too late to comment as the deadline had passed.

I can't access the eRDM link and deleted the attachment you sent previously (mailbox issues!). Can you please send across and I'll review today?

Thanks,

[REDACTED]

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From: [REDACTED]
Sent: 02 October 2020 13:15
To: [REDACTED]@gov.scot>
Subject: RE: For comment - Ministerial code referral- submission on legal advice

Hi [REDACTED],

No problem at all, I got a bit distracted by the Covid legislation bit of my job so had lost focus on progressing this!

Thanks for looking at this. I've attached the file, happy to discuss.

Best wishes,

[REDACTED]

From: [REDACTED]
Sent: 02 October 2020 12:59
To: [REDACTED]
Subject: RE: For comment - Ministerial code referral- submission on legal advice

Hi [REDACTED],

Apologies I was on leave when the first email came through and thought it was too late to comment as the deadline had passed.

I can't access the eRDM link and deleted the attachment you sent previously (mailbox issues!). Can you please send across and I'll review today?

Thanks,

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

RE: Scottish Ministerial Code: First Minister's Self-Referral

From: Lloyd E (Elizabeth) <elizabeth.lloyd@gov.scot>
To: [REDACTED] <[REDACTED]@gov.scot>
Date: Mon, 05 Oct 2020 18:49:44 +0000

[REDACTED]

Thanks for letting me know. It's nearly complete so it will absolutely be with Mr Hamilton this week.

Regards

Liz

Elizabeth Lloyd
Chief of Staff to the First Minister
St Andrew's House
Regent Road
Edinburgh EH1 3DG

[REDACTED]
Elizabeth.Lloyd@gov.scot

Please note Scottish Ministers, Special advisers and the Permanent Secretary to the Scottish Government are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot for information.

From: [REDACTED] <[REDACTED]@gov.scot>
Sent: 05 October 2020 15:21
To: Lloyd E (Elizabeth) <Elizabeth.Lloyd@gov.scot>
Subject: RE: Scottish Ministerial Code: First Minister's Self-Referral

Dear Liz,

Apologies for the delay in responding- I have also been on annual leave. I have spoken to Mr Hamilton and there is no difficulty with you having a few extra days to respond to his letter.

If you have any other questions please let me know.

Best wishes,

[REDACTED]

From: Lloyd E (Elizabeth) <Elizabeth.Lloyd@gov.scot>
Sent: 23 September 2020 18:37
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: Scottish Ministerial Code: First Minister's Self-Referral

Dear [REDACTED]

I'm contacting you to confirm I have received James Hamilton's letter of the 8th September.

As I have been on leave this was received on the 21st September.

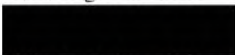
I'm assuming you are the appropriate contact point.

I note the requests and will endeavour to provide a response by the 6th October, however, I understand I may be asked to appear at the parliamentary committee on that date, and given the need to prepare fully for that, alongside normal responsibilities and those resulting from the pandemic, I may need to request a few extra days (perhaps the following week) to ensure I can properly fulfil all my obligations.

With best wishes

Liz

Elizabeth Lloyd
Chief of Staff to the First Minister
St Andrew's House
Regent Road
Edinburgh EH1 3DG


Elizabeth.Lloyd@gov.scot

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SGHHC Committee- publication of Mr Hamilton's letter to the committee

From: [REDACTED]@gov.scot>
To: Deputy First Minister and Cabinet Secretary for Education and Skills
<dfmcse@gov.scot>, McAllister C (Colin) <colin.mcallister@gov.scot>
Cc: Rogers D (David) (Constitution and Cabinet Director) <david.rogers@gov.scot>
Date: Tue, 06 Oct 2020 17:27:09 +0000
Attachments: Mr Hamilton letter to Committee - August 2020 - Final.pdf (174.12 kB); RE:
Publication of written submission - James Hamilton (55.81 kB)

P/S DFM

Spads

~

Please see attached, for information, correspondence from the SGHHC Committee Clerking Team informing the Secretariat to Mr Hamilton that Mr Hamilton's written evidence to the Committee (submitted in August) will be published tomorrow.

~

I have informed Mr Hamilton of this. I have attached Mr Hamilton's letter to the committee, for reference.

~

Best wishes,

~

[REDACTED]

James Hamilton
Independent Adviser on the Scottish Ministerial Code

c/o E: James.hynd@gov.scot

Linda Fabiani MSP
Convener – Committee on the Scottish
Government Handling of Harassment Complaints
c/o Clerk to the Committee
Room T1.03
The Scottish Parliament
Edinburgh
EH99 1SP

3 August 2020

Dear Ms Fabiani

Thank you for your letter of 7 July about the remit of your Committee and its relationship to the First Minister's self-referral under the Scottish Ministerial Code that I have been asked to consider.

I should say at the outset that I do, of course, wish to be as helpful as I can to the Committee. Equally, at this early stage in my consideration of these matters, I do need to make it very clear that I am in possession of very limited information that I could provide at the present time and as an independent adviser I have, of course, had no personal involvement with and therefore no direct evidence which I could give in relation to the issues raised in the referral.

You put a number of specific questions to me in your letter. Let me deal with each of those in turn.

Remit

You asked if the remit for the referral would be published. As you will be aware, the Deputy First Minister has now responded to a Parliamentary Question in which he set out the remit for the referral. This provides the basis on which I will now proceed.

Timescales

I am not at this point able to provide a specific timetable for conducting the referral, nor set a particular deadline by when I will provide my report. Much will depend on the number of people I will need to interview and their availability. In addition the current Covid-19 crisis may create a significant logistical difficulty for the process of conducting the referral.

However, I do fully understand the Parliamentary and public interest in this matter and I will expedite matters as far as I can, consistent with ensuring the integrity of the process.

Evidence

You asked if I will commit at this stage to publish the evidence I gather. I cannot at this point give that commitment. The nature of certain issues within the scope of the referral are such that care will be needed about the handling of any material that I gather during the course of the referral. My report will, of course, be published in the normal way and in line with what has been specified in the remit, and will make appropriate reference to any relevant evidence gathered.

Committee

I note the suggestion that I might be called to appear before the Committee. I will await your further thoughts on that. My own view is that until I have concluded the referral process I would be considerably constrained in what I was able to say to the Committee in any meaningful way.

Please let me know if there is anything further I can add at this stage to any of the points above.

Yours Sincerely

James Hamilton

RE: Publication of written submission - James Hamilton

From: Hynd JS (James) <james.hynd@gov.scot>
To: SGHHC <sgghc@parliament.scot>
Cc: [REDACTED]@gov.scot>
Date: Tue, 06 Oct 2020 16:19:40 +0000

Dear Clerking team

The secretariat has now been established and is led by [REDACTED] [REDACTED], to whom I am copying your email.

James
James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
[REDACTED]

From: SGHHC <SGHHC@Parliament.Scot>
Sent: 06 October 2020 17:03
To: Hynd JS (James) <James.Hynd@gov.scot>
Subject: Publication of written submission - James Hamilton

Dear Mr Hynd,

I note from your email of 3 August that you were acting as liaison for James Hamilton until a secretariat had been established to support his work.

I'd be grateful if you could pass this email to Mr Hamilton or the secretariat to inform him that his written submission to the SGHHC Committee will be published on the Committee's website tomorrow morning.

In Mr Hamilton's written submission, he noted that he was unable to comment on a timescales. If possible, it would be helpful to receive an update on this.

Kind regards

SGHHC Committee Clerking Team

From: James.Hynd@gov.scot <James.Hynd@gov.scot>
Sent: 03 August 2020 22:08
To: SGHHC <SGHHC@Parliament.Scot>
Subject: Response from James Hamilton, Independent Adviser on the Scottish Ministerial Code

Dear [REDACTED]

As you know, the Convener wrote to James Hamilton, the independent adviser on the Scottish Ministerial Code on 7 July.

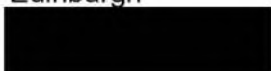
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We are planning to put in place a secretariat to support Mr Hamilton during the referral. Until that is in place I am happy to liaise with Mr Hamilton as required.

Kind regards

James

James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh



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Pàrlamaid na h-Alba: A' toirt deagh bhuaidh air beatha sluagh na h-Alba

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RE: Correspondence to Perm Sec - FM Self Referral under Ministerial Code

From: Permanent Secretary <permanentsecretary@gov.scot>
To: [REDACTED]@gov.scot>
Cc: Permanent Secretary <permanentsecretary@gov.scot>
Date: Tue, 06 Oct 2020 16:42:20 +0000

[REDACTED]

The Permanent Secretary is just finalising her response to Mr Hamilton. However, I'm afraid she will not be in a position to send this today, but will send it by close of play tomorrow.
I hope this is OK and please do pass on her apologies to Mr Hamilton.

Best wishes

Andy

Andy Bruce
Principal Private Secretary to the Permanent Secretary
Scottish Government

[REDACTED]
andrew.bruce@gov.scot

From: [REDACTED]@gov.scot> **On Behalf Of** Permanent Secretary
Sent: 15 September 2020 11:41
To: [REDACTED]@gov.scot>
Cc: Permanent Secretary <PermanentSecretary@gov.scot>
Subject: Correspondence to Perm Sec - FM Self Referral under Ministerial Code

Hello [REDACTED]

I would like to confirm receipt of James Hamilton's letter to the Permanent Secretary, which I note was copied to yourself. The Permanent Secretary will ensure she responds by the deadline set, 6th of October.

Best wishes,

[REDACTED]

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Scottish Government
Riaghaltas na h-Alba
gov.scot



I'm dyslexic -
Thank you for
your consideration.
Celebrate neurodiversity!



RE: Correspondence to Perm Sec - FM Self Referral under Ministerial Code

From: [REDACTED]@gov.scot>
To: Permanent Secretary <permanentsecretary@gov.scot>
Date: Tue, 06 Oct 2020 16:44:39 +0000

Hi Andy,

Many thanks for letting me know. I am sure that this will be fine and will let Mr Hamilton know.

If you have any questions or anything else you need to discuss please let me know.

Best wishes,

[REDACTED]

From: Bruce A (Andrew) **On Behalf Of** Permanent Secretary
Sent: 06 October 2020 17:42
To: [REDACTED]
Cc: Permanent Secretary
Subject: RE: Correspondence to Perm Sec - FM Self Referral under Ministerial Code

[REDACTED]

The Permanent Secretary is just finalising her response to Mr Hamilton. However, I'm afraid she will not be in a position to send this today, but will send it by close of play tomorrow.
I hope this is OK and please do pass on her apologies to Mr Hamilton.

Best wishes

Andy

Andy Bruce
Principal Private Secretary to the Permanent Secretary
Scottish Government

[REDACTED]

From: [REDACTED]@gov.scot> **On Behalf Of** Permanent Secretary
Sent: 15 September 2020 11:41
To: [REDACTED]@gov.scot>
Cc: Permanent Secretary <PermanentSecretary@gov.scot>
Subject: Correspondence to Perm Sec - FM Self Referral under Ministerial Code

Hello [REDACTED]

I would like to confirm receipt of James Hamilton's letter to the Permanent Secretary, which I note was copied to yourself. The Permanent Secretary will ensure she responds by the deadline set,

6th of October.

Best wishes,



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RE: Mail Processing Plan

From: [REDACTED]@gov.scot>
To: Covid-19 Facility Services <covid-19facilityservices@gov.scot>
Date: Tue, 06 Oct 2020 14:38:38 +0000

Hi [REDACTED]

Many thanks. I think it would be best to let me know if anything turns up, so I can collect it if I'm in Edinburgh or otherwise forward anything on unopened if it doesn't align with when I'm in Edinburgh- it isn't sensitive per se but we are trying to keep things as limited as possible.

The mail will be for me if it is addressed to any of the following:

[REDACTED]
Mr James Hamilton c/o [REDACTED]
Mr James Hamilton, Adviser on the Ministerial Code

If it does need to be sent on, could you send it on to [REDACTED], [REDACTED]
[REDACTED] Can it be sent first class?

The cost centre is [REDACTED]

Let me know if I need to provide any further information.

Best wishes,

[REDACTED]

From: [REDACTED] On Behalf Of Covid-19 Facility Services
Sent: 14 September 2020 10:48
To: [REDACTED]
Cc: Covid-19 Facility Services
Subject: RE: Mail Processing Plan

Hi [REDACTED]

Thank you for your email.

If you are happy for your mail to be opened, scanned and emailed across we can set this up for you.

In order to do this we would need the following:

- The email address and name(s) of the individuals that they should send the mail on to.
- Instructions of how they know the mail is for you (i.e. division/review name).

If the mail is sensitive and you do not want the mail to be opened, we can advise our mail staff to contact you so that you can collect it or have it sent to you. We would need the following:

- The name(s) of the individuals that they should send the mail on to.
- Instructions of how they know the mail is for you (i.e. something else that may identify it).
- Your mail cost centre.
- What class you would like the mail sent on by.
- Any other relevant information.

If you have any further questions or would like me to set up one of these options let me know.

Kind regards

From: [REDACTED] <[REDACTED]@gov.scot>
Sent: 14 September 2020 10:26
To: Covid-19 Facility Services <Covid-19FacilityServices@gov.scot>
Subject: Mail Processing Plan

Hi!

I've recently taken on responsibility for providing the secretariat support to Mr James Hamilton, who is undertaking the investigation into the First Minister's self referral under the Ministerial Code. Whilst I haven't provided SAH as a correspondence address for this work, I think it is quite possible that correspondence may be sent to SAH anyway. I would therefore like to set up mail processing arrangements for any correspondence that does arrive at SAH addressed to me, or to Mr Hamilton c/o me.

Could you let me know how I would go about setting up suitable arrangements?
Happy to discuss.

Best wishes,

[REDACTED]

RE: Publication of written submission - James Hamilton

From: Hynd JS (James) <james.hynd@gov.scot>
To: SGHHC <sgghc@parliament.scot>
Cc: [REDACTED] [REDACTED] [REDACTED]@gov.scot>
Date: Tue, 06 Oct 2020 16:19:40 +0000

Dear Clerking team

The secretariat has now been established and is led by [REDACTED] [REDACTED], to whom I am copying your email.

James
James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
[REDACTED]

From: SGHHC <SGHHC@Parliament.Scot>
Sent: 06 October 2020 17:03
To: Hynd JS (James) <James.Hynd@gov.scot>
Subject: Publication of written submission - James Hamilton

Dear Mr Hynd,

I note from your email of 3 August that you were acting as liaison for James Hamilton until a secretariat had been established to support his work.

I'd be grateful if you could pass this email to Mr Hamilton or the secretariat to inform him that his written submission to the SGHHC Committee will be published on the Committee's website tomorrow morning.

In Mr Hamilton's written submission, he noted that he was unable to comment on a timescales. If possible, it would be helpful to receive an update on this.

Kind regards

SGHHC Committee Clerking Team

From: James.Hynd@gov.scot <James.Hynd@gov.scot>
Sent: 03 August 2020 22:08
To: SGHHC <SGHHC@Parliament.Scot>
Subject: Response from James Hamilton, Independent Adviser on the Scottish Ministerial Code

Dear [REDACTED]

As you know, the Convener wrote to James Hamilton, the independent adviser on the Scottish Ministerial Code on 7 July.

Mr Hamilton has asked that I pass on to you his response, as attached. For the avoidance of doubt, I am sending this on Mr Hamilton's behalf as the independent adviser and not on behalf of the Scottish Government.

We are planning to put in place a secretariat to support Mr Hamilton during the referral. Until that is in place I am happy to liaise with Mr Hamilton as required.

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SGHHC Committee- publication of Mr Hamilton's letter to the committee

From: [REDACTED]
To: Deputy First Minister and Cabinet Secretary for Education and Skills
<dfmcse@gov.scot>, McAllister C (Colin) <colin.mcallister@gov.scot>
Cc: Rogers D (David) (Constitution and Cabinet Director) <david.rogers@gov.scot>
Date: Tue, 06 Oct 2020 17:27:02 +0000
Attachments: Mr Hamilton letter to Committee - August 2020 - Final.pdf (174.12 kB); RE:
Publication of written submission - James Hamilton (55.3 kB)

P/S DFM
Spads

Please see attached, for information, correspondence from the SGHHC Committee Clerking Team informing the Secretariat to Mr Hamilton that Mr Hamilton's written evidence to the Committee (submitted in August) will be published tomorrow.

I have informed Mr Hamilton of this. I have attached Mr Hamilton's letter to the committee, for reference.

Best wishes,

[REDACTED]

James Hamilton
Independent Adviser on the Scottish Ministerial Code

c/o E: James.hynd@gov.scot

Linda Fabiani MSP
Convener – Committee on the Scottish
Government Handling of Harassment Complaints
c/o Clerk to the Committee
Room T1.03
The Scottish Parliament
Edinburgh
EH99 1SP

3 August 2020

Dear Ms Fabiani

Thank you for your letter of 7 July about the remit of your Committee and its relationship to the First Minister's self-referral under the Scottish Ministerial Code that I have been asked to consider.

I should say at the outset that I do, of course, wish to be as helpful as I can to the Committee. Equally, at this early stage in my consideration of these matters, I do need to make it very clear that I am in possession of very limited information that I could provide at the present time and as an independent adviser I have, of course, had no personal involvement with and therefore no direct evidence which I could give in relation to the issues raised in the referral.

You put a number of specific questions to me in your letter. Let me deal with each of those in turn.

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Please let me know if there is anything further I can add at this stage to any of the points above.

Yours Sincerely

James Hamilton

RE: Publication of written submission - James Hamilton

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To: SGHHC <sgghc@parliament.scot>
Cc: [REDACTED] <[REDACTED]@gov.scot>
Date: Tue, 06 Oct 2020 16:19:40 +0000

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James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
[REDACTED]

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To: Hynd JS (James) <James.Hynd@gov.scot>
Subject: Publication of written submission - James Hamilton

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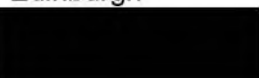
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Sent: 06 October 2020 18:27

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Subject: SGHHC Committee- publication of Mr Hamilton's letter to the committee

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Yours Sincerely

James Hamilton

From: Hynd JS (James) <James.Hynd@gov.scot>
Sent: 06 October 2020 17:20
To: SGHHC <SGHHC@Parliament.Scot>
Cc: [REDACTED]@gov.scot>
Subject: RE: Publication of written submission - James Hamilton

Dear Clerking team

The secretariat has now been established and is led by [REDACTED] to whom I am copying your email.

James

James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh

[REDACTED]

[REDACTED]

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As you know, the Convener wrote to James Hamilton, the independent adviser on the Scottish Ministerial Code on 7 July.

Mr Hamilton has asked that I pass on to you his response, as attached. For the avoidance of doubt, I am sending this on Mr Hamilton's behalf as the independent adviser and not on behalf of the Scottish Government.

We are planning to put in place a secretariat to support Mr Hamilton during the referral. Until that is in place I am happy to liaise with Mr Hamilton as required.

Kind regards

James

James Hynd

Head of Cabinet, Parliament and Governance Division

Room 4N:03

St Andrew's House

Edinburgh

[REDACTED]

[REDACTED]

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From: Deputy First Minister and Cabinet Secretary for Education and Skills <dfmcse@gov.scot>
To: [REDACTED] <[REDACTED]@gov.scot>, Deputy First Minister and Cabinet Secretary for Education and Skills <dfmcse@gov.scot>, McAllister C (Colin) <colin.mcallister@gov.scot>
Cc: Rogers D (David) (Constitution and Cabinet Director) <david.rogers@gov.scot>
Date: Wed, 07 Oct 2020 10:33:23 +0000

Thanks

Best wishes.

RE: Publication of written submission - James Hamilton

From: SGHHC <sgghc@parliament.scot>
To: [REDACTED] <[REDACTED]@gov.scot>
Date: Wed, 07 Oct 2020 13:32:01 +0000

Hi [REDACTED]

The Committee meets again on 27th October so an update by 20th October would be useful so we can include any update in Committee papers for that meeting,

Kind regards

SGHHC Clerking team

From: [REDACTED] <[REDACTED]@gov.scot>
Sent: Wednesday, October 7, 2020 2:20 PM
To: SGHHC
Subject: RE: Publication of written submission - James Hamilton

CAUTION: This e-mail originated from outside of The Scottish Parliament. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear Clerking team,

I have passed your email to Mr Hamilton. You have asked if Mr Hamilton would be able to provide an update on timings- I just wanted to check if there is a particular deadline by which it would be helpful to have this?

Best wishes,

[REDACTED]

From: Hynd JS (James) <James.Hynd@gov.scot>
Sent: 06 October 2020 17:20
To: SGHHC <SGHHC@Parliament.Scot>
Cc: [REDACTED] <[REDACTED]@gov.scot>
Subject: RE: Publication of written submission - James Hamilton

Dear Clerking team

The secretariat has now been established and is led by [REDACTED] [REDACTED], to whom I am copying your email.

James

James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh



From: SGHHC <SGHHC@Parliament.Scot>
Sent: 06 October 2020 17:03
To: Hynd JS (James) <James.Hynd@gov.scot>
Subject: Publication of written submission - James Hamilton

Dear Mr Hynd,

I note from your email of 3 August that you were acting as liaison for James Hamilton until a secretariat had been established to support his work.

I'd be grateful if you could pass this email to Mr Hamilton or the secretariat to inform him that his written submission to the SGHHC Committee will be published on the Committee's website tomorrow morning.

In Mr Hamilton's written submission, he noted that he was unable to comment on a timescales. If possible, it would be helpful to receive an update on this.

Kind regards

SGHHC Committee Clerking Team

From: James.Hynd@gov.scot <James.Hynd@gov.scot>
Sent: 03 August 2020 22:08
To: SGHHC <SGHHC@Parliament.Scot>
Subject: Response from James Hamilton, Independent Adviser on the Scottish Ministerial Code

Dear 

As you know, the Convener wrote to James Hamilton, the independent adviser on the Scottish Ministerial Code on 7 July.

Mr Hamilton has asked that I pass on to you his response, as attached. For the avoidance of doubt, I am sending this on Mr Hamilton's behalf as the independent adviser and not on behalf of the Scottish Government.

We are planning to put in place a secretariat to support Mr Hamilton during the referral. Until that is in place I am happy to liaise with Mr Hamilton as required.

Kind regards

James

James Hynd

Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh

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From: [REDACTED] <[REDACTED]@gov.scot> **On Behalf Of** Deputy First Minister and Cabinet Secretary for Education and Skills

Sent: 07 October 2020 11:33

To: [REDACTED]@gov.scot>; Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>

Cc: Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>

Subject: RE: SGHHC Committee- publication of Mr Hamilton's letter to the committee

[REDACTED]

The DFM has noted this information.

Thanks

[REDACTED]

[REDACTED] | Interim Private Secretary to John Swinney MSP, Deputy First Minister and Cabinet Secretary for Education and Skills | The Scottish Government | Web: www.gov.scot
| Tel: [REDACTED] | Mob: [REDACTED] | Email: DFMCSE@gov.scot

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From: [REDACTED]

Sent: 06 October 2020 18:27

To: Deputy First Minister and Cabinet Secretary for Education and Skills ; McAllister C (Colin)

Cc: Rogers D (David) (Constitution and Cabinet Director)

Subject: SGHHC Committee- publication of Mr Hamilton's letter to the committee

P/S DFM

Spads

Please see attached, for information, correspondence from the SGHHC Committee Clerking Team informing the Secretariat to Mr Hamilton that Mr Hamilton's written evidence to the Committee (submitted in August) will be published tomorrow.

I have informed Mr Hamilton of this. I have attached Mr Hamilton's letter to the committee, for reference.

Best wishes,

A solid black rectangular box used to redact a signature.

From: [REDACTED] <Craig.Peaston@gov.scot> On Behalf Of Deputy First Minister and Cabinet Secretary for Education and Skills

Sent: 07 October 2020 11:33

To: [REDACTED]@gov.scot>; Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>

Cc: Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>

Subject: RE: SGHHC Committee- publication of Mr Hamilton's letter to the committee

[REDACTED]

The DFM has noted this information.

Thanks

[REDACTED]

[REDACTED] | Interim Private Secretary to John Swinney MSP, Deputy First Minister and Cabinet Secretary for Education and Skills | The Scottish Government | Web: www.gov.scot | Email: DFMCSE@gov.scot

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From: [REDACTED]@gov.scot>

Sent: 06 October 2020 18:27

To: Deputy First Minister and Cabinet Secretary for Education and Skills

<DFMCSE@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>

Cc: Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>

Subject: SGHHC Committee- publication of Mr Hamilton's letter to the committee

P/S DFM

Spads

Please see attached, for information, correspondence from the SGHHC Committee Clerking Team informing the Secretariat to Mr Hamilton that Mr Hamilton's written evidence to the Committee (submitted in August) will be published tomorrow.

I have informed Mr Hamilton of this. I have attached Mr Hamilton's letter to the committee, for reference.

Best wishes,

[REDACTED]

From: James Hamilton [REDACTED]
Sent: 08 October 2020 12:18
To: [REDACTED]@gov.scot>
Subject: Re: FW: Publication of written submission - James Hamilton

Dear [REDACTED]

Thank you for this information. I agree it gives us some more time to consider my response to the Parliamentary Committee..

The letter from Mr Salmond underlines the need for me to have a legal advisor. Indeed, I would be reluctant to issue a reply to him without it first being seen by a legal advisor. I would therefore like you to put this in hand as soon as possible. We can discuss this further tomorrow but there is a degree of urgency about getting it organised. I do not want to delay too much in replying to Mr Salmond.

I would also anticipate that I might wish to be accompanied at any interviews by the legal adviser. It would obviously be necessary that I be able to take advice confidentially during the course of an interview were any issue requiring such advice to arise. This may create logistic difficulties in setting up remote electronic interviews which could allow for such a process..

Another issue which needs to be resolved is that of providing me with an indemnity in the event that somebody sues me. I believe that I mentioned this to James Hynd when I first had dealings with him but now that I am embarked on the process the risk is there.

I will talk to you at 1.00 pm tomorrow.

James

On Wed, 7 Oct 2020 at 14:44, wrote:
The Committee are looking for an update by the 20th, which gives us a decent length of time to provide more information.

From: SGHHC
Sent: 07 October 2020 14:32
To: [REDACTED]
Subject: RE: Publication of written submission - James Hamilton

Hi [REDACTED]

The Committee meets again on 27th October so an update by 20th October would be useful so we can include any update in Committee papers for that meeting,

Kind regards

SGHHC Clerking team

From: [REDACTED] <[REDACTED]@gov.scot>
Sent: Wednesday, October 7, 2020 2:20 PM
To: SGHHC <SGHHC@Parliament.Scot>
Subject: RE: Publication of written submission - James Hamilton

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Dear Clerking team,

I have passed your email to Mr Hamilton. You have asked if Mr Hamilton would be able to provide an update on timings- I just wanted to check if there is a particular deadline by which it would be helpful to have this?

Best wishes,

[REDACTED]

From: Hynd JS (James) <James.Hynd@gov.scot>
Sent: 06 October 2020 17:20
To: SGHHC <SGHHC@Parliament.Scot>
Cc: [REDACTED] <[REDACTED]@gov.scot>
Subject: RE: Publication of written submission - James Hamilton

Dear Clerking team

The secretariat has now been established and is led by [REDACTED] to whom I am copying your email.

James

James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
Internal [REDACTED]
[REDACTED]

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From: [REDACTED]
Sent: 09 October 2020 14:20
To: [REDACTED]@gov.scot>; Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
Cc: Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>
Subject: Official sensitive- submission on legal advice for Mr James Hamilton

P/S DFM
[REDACTED]

Please see attached note seeking views on:

- An approach to sourcing legal advice for the independent adviser, Mr Hamilton; and [REDACTED]

Happy to discuss,

Best wishes,
[REDACTED]

[REDACTED] | Secretariat to the Independent Advisor under the Ministerial Code | Please contact me on Skype or on [REDACTED]

Note from Permanent Secretary to FM

First Minister

Strictly private and confidential

Your note of 6 June informed me that the former First Minister, Alex Salmond had made you aware that an investigation was being conducted by the civil service into two formal complaints by civil servants about his conduct in office. [Redacted]

[Redacted]

[Redacted]

In line with the Procedure, I will report the outcome of the investigation and decisions about the next steps to be taken by the Scottish Government to you once I have informed the complainers and former First Minister of my conclusions.

Leslie Evans
17 August 2018

Deputy First Minister
[REDACTED]

INDEPENDENT ADVISER ON THE MINISTERIAL CODE

Purpose

1. To seek views on:
 - An approach to sourcing legal advice for the independent adviser, Mr Hamilton; and

[REDACTED]

Timing

2. Urgent. A response by 13 October would be helpful as it would allow the Secretariat to start work on sourcing legal advice for Mr Hamilton.

Background

3. Mr Hamilton was appointed as the independent adviser who would lead on the First Minister's self-referral under the Ministerial Code. This work was paused due to Coronavirus and resumed in early August 2020.
4. I am providing secretariat support to Mr Hamilton, as required. I have had no prior involvement with any aspects of the issues covered by Mr Hamilton's remit (copy at Annex A).

Legal Advice to Mr Hamilton

5. Mr Hamilton has requested that he has access to legal advice during the referral process, and in preparing his final report. Mr Hamilton is not familiar with the Scottish legal system. In collecting evidence and producing his report he will need to navigate the relevant Court orders and data protection issues. I think his request is therefore reasonable and suggest this support should be made available as soon as possible.

6. [REDACTED]

Existing procurement frameworks for legal services can only be used by those included on the framework, which in this case would mean that Scottish Ministers or an alternative intermediary would need to procure legal advice on behalf of Mr Hamilton.

7. Alternatively, Mr Hamilton could source his own legal advice and claim the costs from the Scottish Government. The secretariat could assist Mr Hamilton to identify a suitable firm, using as a benchmark the same criteria for inclusion within SG legal services procurement frameworks. This would help ensure value for money while being completely independent from Scottish Ministers. It is likely that up to 10 days of legal advice may be necessary to support this work, with costs somewhere between £7,000 and £25,000.

8. **Are you content for Mr Hamilton to source his own advice, and for costs to be incurred, with VFM considerations managed by reference to the SG's legal services framework?**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Conclusion

16. Can you please advise me:

- If you are content that we support Mr Hamilton to obtain his own legal advice with the costs being met by the Scottish Government; and

[REDACTED]

[REDACTED]

October 2020

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[REDACTED]
David Rogers
[REDACTED]
[REDACTED]
Colin McAllister

Annex A: Remit

The remit for the referral is to:

1. Review any relevant documentation relating to the meetings and discussions listed above.
2. Interview any Minister or official of the Scottish Government, including Special Advisers, who may have any knowledge of the facts and content of the meetings and discussions, to assess whether the Ministerial Code is engaged and, if so, whether the terms of the Code have been complied with.
3. Interview any relevant person outwith the Scottish Government, including the former First Minister, Alex Salmond, who may have information relating to the facts and content of the meetings and discussions.
4. Determine if there is any evidence that the First Minister attempted to use information discussed during those meetings and discussions to influence the conduct of the investigation being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure.
5. Provide the Deputy First Minister with a report setting out the findings and conclusions with regard to:
 - i. whether the Ministerial Code is engaged regarding the meetings and discussions;
 - ii. whether there has been any breach of the Code and the nature of any such breach; and
 - iii. if a breach has occurred, advice on the appropriate remedy or sanction.
6. The Independent Adviser is further invited to consider and offer views on whether the Ministerial Code might need revision to reflect the terms of the Procedure and the strict limitations it places on the involvement of the First Minister in cases which fall to be considered under the Procedure.

From: [REDACTED]
Sent: 09 October 2020 09:32
To: 'James Hamilton' [REDACTED]
Subject: Personal- update on written submissions

Hi James,

Ahead of our conversation later, please see attached word document containing two embedded email submissions. I have password protected the document and will send the password by separate means.

I'm looking to set up a secure file sharing account to use in future- however, in the meantime I thought this approach might work. Let me know if you have any issues opening the files on a Mac- if you do have difficulties I can try a different approach.

I have also copied [REDACTED]

[REDACTED]

Best wishes,

[REDACTED]

[REDACTED]

[REDACTED]

Correspondence from the Permanent Secretary

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

From: Bruce A (Andrew) <Andrew.Bruce@gov.scot> **On Behalf Of** Permanent Secretary
Sent: 07 October 2020 19:31
To: [REDACTED]@gov.scot>
Cc: Permanent Secretary <PermanentSecretary@gov.scot>
Subject: RE: Correspondence to Perm Sec - FM Self Referral under Ministerial Code

[REDACTED]

With apologies for the delay, please find attached the Permanent Secretary's response to Mr Hamilton's letter of 8 September.

Thanks

Andy

Andy Bruce
Principal Private Secretary to the Permanent Secretary
Scottish Government

[REDACTED]
andrew.bruce@gov.scot

From: Bruce A (Andrew) **On Behalf Of** Permanent Secretary
Sent: 06 October 2020 17:42
To: [REDACTED]@gov.scot>
Cc: Permanent Secretary <PermanentSecretary@gov.scot>
Subject: RE: Correspondence to Perm Sec - FM Self Referral under Ministerial Code

[REDACTED]

The Permanent Secretary is just finalising her response to Mr Hamilton. However, I'm afraid she will not be in a position to send this today, but will send it by close of play tomorrow. I hope this is OK and please do pass on her apologies to Mr Hamilton.

Best wishes

Andy

Andy Bruce
Principal Private Secretary to the Permanent Secretary
Scottish Government

[REDACTED]
andrew.bruce@gov.scot

From: [REDACTED]@gov.scot> **On Behalf Of** Permanent Secretary
Sent: 15 September 2020 11:41
To: [REDACTED]@gov.scot>

Cc: Permanent Secretary <PermanentSecretary@gov.scot>

Subject: Correspondence to Perm Sec - FM Self Referral under Ministerial Code

Hello [REDACTED]

I would like to confirm receipt of James Hamilton's letter to the Permanent Secretary, which I note was copied to yourself. The Permanent Secretary will ensure she responds by the deadline set, 6th of October.

Best wishes,

[REDACTED]
Private Secretary to the Permanent Secretary | [REDACTED] [@gov.scot](mailto:[REDACTED]@gov.scot) | I lead on DG ECJ, DG HSC & DG ODO

Scottish Ministers, Special Advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot



Scottish Government
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gov.scot



I'm dyslexic.
Thank you for
your consideration.
Celebrate neurodiversity!



Letter from FM to Permanent Secretary

STRICTLY PRIVATE & CONFIDENTIAL

6 June 2018

For the attention of the Permanent Secretary

On Monday 2 April I was informed by Alex Salmond that you were investigating a complaint from within the civil service about his conduct while First Minister and that the complaint relates to alleged conduct of a sexual nature.

It was clear, from what he told me, that the complaint was being investigated under the guidance put in place towards the end of last year as part of the Scottish Government's response to the public discussion around sexual harassment cases, and which contained provisions for the handling of any complaints against former Ministers. I recalled and explained that as First Minister I had no role in this process, and that I would be advised of a complaint against a former Minister only when you have concluded your investigation.

The former First Minister (FFM) contacted me again on Monday 23 April to say that he intended to propose mediation.

I told the FFM on both occasions that it would not be appropriate for me to seek to intervene in the process in any way and I did not do so.

[REDACTED]

After careful consideration, I decided not to inform you of these approaches as I did not want there to be any suggestion that I was seeking to intervene in the process.

However, I have now had a further approach from the FFM and, given its nature and that it represents a potential challenge to the process, I have decided that I should make you aware of it.

The FFM has told me that he considers the process being followed by the Scottish Government to be unlawful, that he has legal advice to the effect that he would be successful in an application for Judicial Review of the process, and that if any finding is made against him, it is his intention to lodge an application for Judicial Review to seek to have the process declared unlawful.

I want to be very clear that my purpose sending this note is not to ask you to cease the investigation or to influence its course in any way – it is to be transparent with you about my knowledge of a potential challenge to the process. You and I have discussed on many occasions the importance of a zero tolerance approach to sexual harassment within the Scottish Government and the importance to building confidence in such an approach of taking such complaints seriously and ensuring proper investigation. I am clear that the seniority, political affiliation or relationship to me or my government of any person subject to a complaint should have no bearing on how it's handled. To that end, you have my support in taking whatever steps you consider necessary and appropriate to investigate any complaint about inappropriate conduct within the Scottish Government.

It remains my view that it would be inappropriate for us to discuss the substance of the investigation prior to its conclusion.

I intend to inform the FFM that I have told you about his approach to me and to advise him again that it would not be appropriate for me to intervene in the process.

Finally, I am also mindful of the public interest considerations that arise when allegations of this nature are made. At this stage, however, it is my view that the interest of ensuring that the conduct of the investigation is fair to all parties and respects the confidentiality of the complainant(s) is the priority.

NICOLA STURGEON

Response from Permanent Secretary to FM

STRICTLY PRIVATE & CONFIDENTIAL

7 JUNE 2018

For the attention of the First Minister

I confirm receipt of your note of 6 June 2018, the terms of which I have noted.

LESLIE EVANS

Permanent Secretary

Note from Permanent Secretary to FM

First Minister

Strictly private and confidential

Your note of 6 June informed me that the former First Minister, Alex Salmond had made you aware that an investigation was being conducted by the civil service into

two formal complaints by civil servants about his conduct in office. [Redacted]

[Redacted]

[Redacted]

In line with the Procedure, I will report the outcome of the investigation and decisions about the next steps to be taken by the Scottish Government to you once I have informed the complainers and former First Minister of my conclusions.

Leslie Evans

17 August 2018



██████████
E: PermanentSecretary@gov.scot

James Hamilton
Independent Adviser on the Scottish Ministerial Code

c/o ██████████ [@gov.scot](mailto:██████████@gov.scot)

7 October 2020

Dear Mr Hamilton

Thank you for your letter of 8 September seeking information from me in relation to your consideration of the First Minister's self-referral under the Scottish Ministerial Code.

You asked for a statement of my actions and involvement in the matters covered by your remit. In providing such a statement, I should make clear from the outset that, as a civil servant, all my actions – including those taken in relation to this matter – are undertaken on behalf of Ministers and in keeping with the Civil Service Code.

I was not aware at the time – nor have I been made aware since - of any attempt by the First Minister to bring any influence to bear on the Scottish Government's investigation of complaints against Mr Salmond under the Procedure for Handling Harassment Complaints against Current or Former Ministers. At all times, my engagement with the First Minister was in keeping with the respective roles set out for the First Minister and Permanent Secretary in the Procedure. Accordingly, I did not inform the First Minister that formal complaints had been made about Mr Salmond when they were received in January 2018. In line with the Procedure, I did inform the First Minister of the outcome of the investigation at a meeting on 22 August 2018 in her capacity as both First Minister and as Leader of the Party which the former Minister in question, Mr Salmond, had represented.

As I have set out in my response to your specific questions below, the First Minister wrote to me on 6 June 2018, following a discussion on 5 June 2018, informing me of contact that she had had with Mr Salmond. I replied to the First Minister on 7 June 2018 to acknowledge receipt of her letter and to note the information it contained. In addition, I also wrote to the First Minister towards the end of the investigation on 17 August 2018 to inform her I was seeking legal advice on next steps. I am providing copies of all this correspondence as appendices to this letter, although one sentence in my letter of 17 August is redacted. You may wish to note that the same correspondence – with the same redactions - has also been provided to the Scottish Parliament's Committee on the Scottish Government Handling of Harassment Complaints and has today been published on its website (albeit with additional

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www.gov.scot



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redactions)¹. In addition to these exchanges, the only other communication I recall with the First Minister on this matter was a telephone call sometime in mid-July in which she told me that she had met with Mr Salmond on 14 July 2018 and that he had raised the issue of arbitration with her. She made it clear to me again that she had no role in this matter and that I must reach whatever decision I thought appropriate. Accordingly, my communication with the First Minister on this issue was very limited during the period in which the investigation was in progress.

In line with the Procedure, Mr Salmond had a number of opportunities to contribute to the investigation. I address this further in my answers to your specific questions below.

The intentions that lay behind my actions at all times throughout this period were the need to follow the process set out in the Scottish Government's Procedure for Handling Harassment Complaints against Current or Former Ministers, in line with the Civil Service values of integrity, honesty, objectivity and impartiality. This was especially true in carrying out the responsibilities as Deciding Officer assigned to the Permanent Secretary under the Procedure. At no time did I experience any attempt whatsoever by the First Minister – or anyone acting on behalf of the First Minister – to influence how I undertook that role, or the decisions I came to, either in terms of the process followed or the substance of the matter. Indeed, this point is made explicit in the First Minister's letter to me of 6 June 2018:

"I want to be very clear that my purpose sending this note is not to ask you to cease the investigation or to influence its course in any way – it is to be transparent with you about my knowledge of a potential challenge to the process. You and I have discussed on many occasions the importance of a zero tolerance approach to sexual harassment within the Scottish Government and the importance to building confidence in such an approach of taking such complaints seriously and ensuring proper investigation. I am clear that the seniority, political affiliation or relationship to me or my government of any person subject to a complaint should have no bearing on how it's handled. To that end, you have my support in taking whatever steps you consider necessary and appropriate to investigate any complaint about inappropriate conduct within the Scottish Government."

I have set out responses to each of your specific questions below.

1. In her statement to Parliament on 8 January 2019, the First Minister has disclosed five contacts (three meetings and two telephone conversations) with Mr Salmond. When were you first informed of the contacts between the First Minister and Mr Salmond, and any representations to the First Minister, or any civil servant or special advisor, made on behalf of Mr Salmond?

The First Minister first alerted me to her contact with Mr Salmond during my regular post-Cabinet meeting with her on 5 June 2018. The First Minister then wrote to me on the following day – 6 June 2018 – providing details of the contact with Mr Salmond on 2 April and 23 April 2018. The First Minister's letter went on to say, *"I intend to inform the FFM that I have told you about his approach to me and to advise him again that it would not be appropriate for me to intervene in the process."* I understood that the First Minister intended

¹ <https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/116245.aspx>

to do so ahead of the Scottish National Party Spring Conference that took place later that week from 8-9 June 2018 in Aberdeen.

Aside from the subsequent contacts outlined by the First Minister in her statement to Parliament on 8 January 2019 – about which, as she made clear at First Minister's Questions on 10 January 2019², she also told me - I am not aware of any further representations to the First Minister or any special advisor on behalf of Mr Salmond.

In addition, and as I set out in evidence that I gave to the Committee on the Scottish Government Handling of Harassment Complainants on 18 August 2020, I had also been made aware in early November 2017 that Mr Salmond had contacted civil servants about an incident at Edinburgh airport that was being investigated by Sky News. I shared this information with the First Minister, as I made clear to the Committee.

With the exception of the representations made by Mr Salmond as part of the investigation under the Procedure, I am not aware of any further representations to any civil servant on behalf of Mr Salmond in relation to the investigation.

2 What information was provided to you about the contacts and meetings between the First Minister and Mr Salmond, and any representations made on Mr Salmond's behalf?

The First Minister's letter of 6 June 2018, following a discussion on 5 June 2018, represents the full extent of the written information that was provided to me about these contacts and meetings. In addition to these exchanges, the only other communication I recall with the First Minister on this matter was a telephone call sometime in mid-July in which she told me that she had met with Mr Salmond on 14 July 2018 and that he had raised the issue of arbitration with her. She made it clear to me again that she had no role in this matter and that I must reach whatever decision I thought appropriate.

3 Did you or any other civil servant or special adviser, provide advice to the First Minister on contacts with or representations received from Mr Salmond? If so, when was this advice provided and what was the content of this advice. Can you please provide me with copies of any notes, memoranda etc., concerning or containing any such advice.

I did not provide any advice to the First Minister on contacts with or representations received from Mr Salmond. As the First Minister made clear in her letter to me on 6 June 2018, *"It remains my view that it would be inappropriate for us to discuss the substance of the investigation prior to its conclusion."*

I am not aware of any other civil servant or special adviser providing advice to the First Minister on contacts with or representations received from Mr Salmond.

² <https://www.parliament.scot/parliamentarybusiness/report.aspx?r=11875&mode=pdf>

4. How was the investigation into the complaints against Mr Salmond conducted? What procedures were followed and applied? What was the role of the First Minister in relation to the investigation? Was there any involvement from the First Minister, or any other person acting on behalf of the First Minister, in the investigation? Were there any representations received, either directly or indirectly, from Mr Salmond or anyone acting on his behalf?

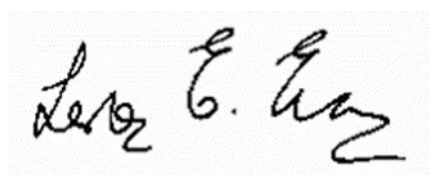
The questions set out here will be covered in full by the Scottish Government's fourth and final written statement and supporting documents to the Committee on the Scottish Government Handling of Harassment Complaints, which will cover the investigation of complaints. As you may be aware, the Deputy First Minister wrote to the Convener on 31 August 2020 to inform her that the submission of this material has been delayed pending resolution of an objection received by the Scottish Government to the proposed release of the material³.

The Scottish Government is currently taking steps to resolve this situation, which include initiating an application to court. I will ensure a copy of the written statement is sent to you once it has been provided to the Committee.

However, I can confirm now that, in accordance with the Procedure, the First Minister had no role in relation to the investigation. I can also confirm that, again in accordance with the Procedure, Mr Salmond had the opportunity to make representations as part of the investigation, which he did on a number of occasions through his legal representatives.

I hope the information I have provided is helpful. I would be happy to provide any further information you require, either by correspondence or through an interview.

Yours sincerely



1. Leslie Evans
Permanent Secretary

Appendix A - Letter from First Minister to Permanent Secretary – 6 June 2018

Appendix B - Letter from Permanent Secretary to First Minister – 7 June 2018

Appendix C - Letter from Permanent Secretary to First Minister – 17 August 2018

³[https://www.parliament.scot/HarassmentComplaintsCommittee/General%20documents/DFM letter to Convener - 31 August 2020.pdf](https://www.parliament.scot/HarassmentComplaintsCommittee/General%20documents/DFM%20letter%20to%20Convenor%20-%2031%20August%202020.pdf)

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

From: [REDACTED]
Sent: 09 October 2020 14:11
To: James Hamilton [REDACTED]
Subject: Personal- written statements

Hi James,

Third attempt- in plain text. There is one attachment missing which I will work out how to handle. [REDACTED]
[REDACTED] I don't think there are issues with the approach she suggests but grateful for any views.

Best wishes,

[REDACTED]

[illegible]

Thank you for your letter of 8 September seeking information from me in relation to your consideration of the First Minister's self-referral under the Scottish Ministerial Code. You asked for a statement of my actions and involvement in the matters covered by your remit. In providing such a statement, I should make clear from the outset that, as a civil servant, all my actions – including those taken in relation to this matter – are undertaken on behalf of Ministers and in keeping with the Civil Service Code.

I was not aware at the time – nor have I been made aware since - of any attempt by the First Minister to bring any influence to bear on the Scottish Governments's investigation of complaints against Mr Salmond under the Procedure for Handling Harrassment Complaints against Current or Former Ministers. At all times, my engagement with the First Minister was in keeping with the respective roles set out for the First Minister and Permanent Secretary in the Procedure. Accordingly, I did not inform the First Minister

that formal complaints had been made about Mr Salmond when they were received in January 2018. In line with the Procedure, I did inform the First Minister of the outcome of the investigation at a meeting on 22 August 2018 in her capacity as both First Minister and as Leader of the Party which the former Minister in question, Mr Salmond, had represented.

As I have set out in my response to your specific questions below, the First Minister wrote to me on 6 June 2018, following a discussion on 5 June 2018, informing me of contact that she had had with Mr Salmond. I replied to the First Minister on 7 June 2018 to acknowledge receipt of her letter and to note the information it contained. In addition, I also wrote to the First Minister towards the end of the investigation on 17 August 2018 to inform her I was seeking legal advice on next steps. I am providing copies of all this correspondence as appendices to this letter, although one sentence in my letter of 17 August is redacted. You may wish to note that the same correspondence – with the same redactions - has also been provided to the Scottish Parliament's Committee on the Scottish Government Handling of Harassment Complaints and has today been published on its website (albeit with additional redactions)¹. In addition to these exchanges, the only other communication I recall with the First Minister on this matter was a telephone call sometime in mid-July in which she told me that she had met with Mr Salmond on 14 July 2018 and that he had raised the issue of arbitration with her. She made it clear to me again that she had no role in this matter and that I must reach whatever decision I thought appropriate. Accordingly, my communication with the First Minister on this issue was very limited during the period in which the investigation was in progress.

In line with the Procedure, Mr Salmond had a number of opportunities to contribute to the investigation. I address this further in my answers to your specific questions below. The intentions that lay behind my actions at all times throughout this period were the need to follow the process set out in the Scottish Government's Procedure for Handling Harassment Complaints against Current or Former Ministers, in line with the Civil Service values of integrity, honesty, objectivity and impartiality. This was especially true in carrying out the responsibilities as Deciding Officer assigned to the Permanent Secretary under the Procedure. At no time did I experience any attempt whatsoever by the First Minister – or anyone acting on behalf of the First Minister – to influence how I undertook that role, or the decisions I came to, either in terms of the process followed or the substance of the matter. Indeed, this point is made explicit in the First Minister's letter to me of 6 June 2018:

"I want to be very clear that my purpose sending this note is not to ask you to cease the investigation or to influence its course in any way – it is to be transparent with you about my knowledge of a potential challenge to the process. You and I have discussed on many occasions the importance of a zero tolerance approach to sexual harassment within the Scottish Government and the importance to building confidence in such an approach of taking such complaints seriously and ensuring proper investigation. I am clear that the seniority, political affiliation or relationship to me or my government of any person subject to a complaint should have no bearing on how it's handled. To that end, you have my support in taking whatever steps you consider necessary and appropriate to investigate any complaint about inappropriate conduct within the Scottish Government."

I have set out responses to each of your specific questions below.

1. In her statement to Parliament on 8 January 2019, the First Minister has disclosed five contacts (three meetings and two telephone conversations) with Mr Salmond. When were you first informed of the contacts between the First Minister and Mr Salmond, and any representations to the First Minister, or any civil servant or special advisor, made on behalf of Mr Salmond?

The First Minister first alerted me to her contact with Mr Salmond during my regular post-Cabinet meeting with her on 5 June 2018. The First Minister then wrote to me on the following day – 6 June 2018 – providing details of the contact with Mr Salmond on 2 April and 23 April 2018. The First Minister's letter went on to say, *"I intend to inform the FFM that I have told you about his approach to me and to advise him again that it would not be appropriate for me to intervene in the process."* I understood that the First Minister intended to do so ahead of the Scottish National Party Spring Conference that took place later that week from 8-9 June 2018 in Aberdeen.

Aside from the subsequent contacts outlined by the First Minister in her statement to Parliament on 8 January 2019 – about which, as she made clear at First Minister's Questions on 10 January 2019², she also told me - I am not aware of any further representations to the First Minister or any special advisor on behalf of Mr Salmond. In addition, and as I set out in evidence that I gave to the Committee on the Scottish Government Handling of Harassment Complainants on 18 August 2020, I had also been made aware in early November 2017 that Mr Salmond had contacted civil servants about an incident at Edinburgh airport that was being investigated by Sky News. I shared this information with the First Minister, as I made clear to the Committee. With the exception of the representations made by Mr Salmond as part of the investigation under the Procedure, I am not aware of any further representations to any civil servant on behalf of Mr Salmond in relation to the investigation.

2. What information was provided to you about the contacts and meetings between the First Minister and Mr Salmond, and any representations made on Mr Salmond's behalf?

The First Minister's letter of 6 June 2018, following a discussion on 5 June 2018, represents the full extent of the written information that was provided to me about these contacts and meetings. In addition to these exchanges, the only other communication I recall with the First Minister on this matter was a telephone call sometime in mid-July in which she told me that she had met with Mr Salmond on 14 July 2018 and that he had raised the issue of arbitration with her. She made it clear to me again that she had no role in this matter and that I must reach whatever decision I thought appropriate.

3. Did you or any other civil servant or special adviser, provide advice to the First Minister on contacts with or representations received from Mr Salmond? If so, when was this advice provided and what was the content of this advice. Can you please provide me with copies of any notes, memoranda etc., concerning or containing any such advice.

I did not provide any advice to the First Minister on contacts with or representations received from Mr Salmond. As the First Minister made clear in her letter to me on 6 June 2018, *"It remains my view that it would be inappropriate for us to discuss the substance of the investigation prior to its conclusion."*

I am not aware of any other civil servant or special adviser providing advice to the First Minister on contacts with or representations received from Mr Salmond.

4. How was the investigation into the complaints against Mr Salmond conducted? What procedures were followed and applied? What was the role of the First Minister in relation to the investigation? Was there any involvement from the First Minister, or any other person acting on behalf of the First Minister, in the investigation? Were there any representations received, either directly or indirectly, from Mr Salmond or anyone acting on his behalf?

The questions set out here will be covered in full by the Scottish Government's fourth and final written statement and supporting documents to the Committee on the Scottish Government Handling of Harassment Complaints, which will cover the investigation of complaints. As you may be aware, the Deputy First Minister wrote to the Convener on 31 August 2020 to inform her that the submission of this material has been delayed pending resolution of an objection received by the Scottish Government to the proposed release of the material³.

The Scottish Government is currently taking steps to resolve this situation, which include initiating an application to court. I will ensure a copy of the written statement is sent to you once it has been provided to the Committee.

However, I can confirm now that, in accordance with the Procedure, the First Minister had no role in relation to the investigation. I can also confirm that, again in accordance with the Procedure, Mr Salmond had the opportunity to make representations as part of the investigation, which he did on a number of occasions through his legal representatives.

I hope the information I have provided is helpful. I would be happy to provide any further information you require, either by correspondence or through an interview.

Yours sincerely

Annex A

Letter from FM to Permanent Secretary

STRICTLY PRIVATE & CONFIDENTIAL

6 June 2018

For the attention of the Permanent Secretary

On Monday 2 April I was informed by Alex Salmond that you were investigating a complaint from within the civil service about his conduct while First Minister and that the complaint relates to alleged conduct of a sexual nature.

It was clear, from what he told me, that the complaint was being investigated under the guidance put in place towards the end of last year as part of the Scottish Government's response to the public discussion around sexual harassment cases, and which contained provisions for the handling of any complaints against former Ministers. I recalled and explained that as First Minister I had no role in this process, and that I would be advised of a complaint against a former Minister only when you have concluded your investigation.

The former First Minister (FFM) contacted me again on Monday 23 April to say that he intended to propose mediation.

I told the FFM on both occasions that it would not be appropriate for me to seek to intervene in the process in any way and I did not do so.

[REDACTED]

After careful consideration, I decided not to inform you of these approaches as I did not want there to be any suggestion that I was seeking to intervene in the process. However, I have now had a further approach from the FFM and, given its nature and that it represents a potential challenge to the process, I have decided that I should make you aware of it.

The FFM has told me that he considers the process being followed by the Scottish Government to be unlawful, that he has legal advice to the effect that he would be successful in an application for Judicial Review of the process, and that if any finding is made against him, it is his intention to lodge an application for Judicial Review to seek to have the process declared unlawful.

I want to be very clear that my purpose sending this note is not to ask you to cease the investigation or to influence its course in any way – it is to be transparent with you about my knowledge of a potential challenge to the process. You and I have discussed on many occasions the importance of a zero tolerance approach to sexual harassment within the Scottish Government and the importance to building confidence in such an approach of taking such complaints seriously and ensuring proper investigation. I am clear that the seniority, political affiliation or relationship to me or my government of any person subject to a complaint should have no bearing on how it's handled. To that end, you have my support in taking whatever steps you consider necessary and appropriate to investigate any complaint about inappropriate conduct within the Scottish Government.

It remains my view that it would be inappropriate for us to discuss the substance of the investigation prior to its conclusion.

I intend to inform the FFM that I have told you about his approach to me and to advise him again that it would not be appropriate for me to intervene in the process. Finally, I am also mindful of the public interest considerations that arise when allegations of this nature are made. At this stage, however, it is my view that the interest of ensuring that the conduct of the investigation is fair to all parties and respects the confidentiality of the complainant(s) is the priority.

NICOLA STURGEON

Annex B

Response from Permanent Secretary to FM

STRICTLY PRIVATE & CONFIDENTIAL

7 JUNE 2018

For the attention of the First Minister

I confirm receipt of your note of 6 June 2018, the terms of which I have noted.

LESLIE EVANS

Permanent Secretary

Annex C

Note from Permanent Secretary to FM

First Minister
Strictly private and confidential

Your note of 6 June informed me that the former First Minister, Alex Salmond had made you aware that an investigation was being conducted by the civil service into two formal complaints by civil servants about his conduct in office.

[Redacted]

[Redacted]

In line with the Procedure, I will report the outcome of the investigation and decisions about the next steps to be taken by the Scottish Government to you once I have informed the complainers and former First Minister of my conclusions.

Leslie Evans

17 August 2018

From: Somers J (John) <John.Somers@gov.scot>
Sent: 09 October 2020 16:38
To: [REDACTED]@gov.scot>
Subject: Letter from the First Minister to Mr James Hamilton
Importance: High
Sensitivity: Confidential

Dear [REDACTED]

Pleased find attached, on behalf of the First Minister, her response to Mr Hamilton's letter of the 8 September.

Grateful if you would confirm receipt.

Many thanks,

John

John Somers
Principal Private Secretary to the First Minister
Scottish Government

Work: [REDACTED]

Mob: [REDACTED]



Office of the First Minister of Scotland
FirstMinister.gov.scot
Prìomh Mhinistear na h-Alba

All e-mails and attachments sent by a Ministerial Private Office to any other official on behalf of a Minister relating to a decision, request or comment made by a Minister, or a note of a Ministerial meeting, must be filed appropriately by the recipient. Private Offices do not keep official records of such e-mails or attachments. Scottish Ministers, Special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

9 October 2020

Dear Mr Hamilton

SCOTTISH MINISTERIAL CODE: SELF REFERRAL

Thank you for your letter of 8 September. Please find enclosed the following:

Annex A: I have provided, as requested, a general statement about my actions and involvement in the matters covered by your remit. Please note that I have also provided this statement to the Scottish Parliament Committee on the Scottish Government Handling of Harassment Complaints (hereinafter referred to as “the Committee”).

Annex B: I have enclosed a transcript of WhatsApp messages between myself and Alex Salmond. This information has also been provided to the Committee and I was advised by the clerks that Mr Salmond has asserted legal privilege over the message from him to me dated 16 July 2018 and asked for it to be redacted.

Annex C: A copy of my covering letter to the Committee dated 4 August 2020. The letter is enclosed for completeness. It covers matters that you may consider go beyond your remit but also some information that appears to me to fall within it and which you may find helpful.

As you may be aware, my submission to the Committee has now been published - however, I thought it would be helpful to attach it here for ease of reference.

I will now turn to the specific questions in your letter. Most of them are addressed in the Annexes attached - however, where it seems you are requesting additional information or that I can usefully expand on any points, I will do so below.

Please note that in the Annexes detailed above and in the answers below, I have taken care not to provide any information that would seem to me to risk breaching the order of the High Court in *HMA v AEA Salmond*. If, as a result, it appears to you that there are questions I am not answering directly, I would be happy to discuss this further with you.

Question 1

All of my contacts with Mr Salmond between 16 January and 18 July 2018 are detailed in Annex A. You will note from that account that after my final conversation with him on 18 July, he sent me two further messages - on 18 and 20 July. These are included in Annex B. I did not respond to these messages.

I can confirm that I have had no contact with Mr Salmond - direct or indirect - since.

Question 2

I met with Geoff Aberdein, former Chief of Staff to Mr Salmond, in my office in Parliament on 29 March 2018. The circumstances and nature of this meeting are set out in Annex A.

He was mainly, as I recall now, seeking to persuade me to meet with Mr Salmond. I think the assumption in my mind at the time of this discussion was that any issues of alleged sexual conduct against Mr Salmond would be related to the matter raised by Sky News in the query a

few months earlier. [REDACTED]
[REDACTED] this
would have meant nothing to me as I had not been aware of any such instance. The
reference however makes sense in light of what Mr Salmond told me on 2 April.

As I set out in Annex A, I had forgotten about this encounter until I was reminded of it in early 2019. Since the publication of my evidence to the Committee, it has been asked of me how it is possible that I could have forgotten such an encounter.

It is obviously not possible for anyone to be certain of the reasons for forgetting an event. But the reasons I think this meeting was not engraved in my mind (beyond the fact that it was an unscheduled meeting in the middle of a busy day) are alluded to in my Committee submission, and it may be helpful for me to expand.

Firstly, by the time I met with Mr Aberdein, I already had what I describe as a 'lingering concern' that allegations may emerge about Mr Salmond. This was as a result of the Sky media query in November 2017. In other words, the meeting was not the first time possible allegations about Mr Salmond had been raised with me - had it been, my memory may have been more vivid. But the second, and perhaps more relevant factor is that my meeting with Mr Salmond himself a few days later on 2 April was so significant. It was then that he told me the details of the actual complaints against him and his response to them. I think it is because this was such a shock to me that the earlier meeting was overwritten in my mind.

Question 3

There were no meetings - other than those I have declared - between anyone representing me and Mr Salmond.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

Question 4

A summary of the purpose of, and participation in, each of the contacts is provided in Annex A. The messages at Annex B also include relevant detail. I expand on the purpose of and reasons for each of the contacts in my response to Question 5.

However, I include under this question detail of the following: who initiated each meeting; how long (as far as I can recall) each contact lasted; and who was present.

I did not make a record of any of the contacts. However, I gave a verbal account of each of them to my Chief of Staff.

2 April

This meeting was initiated by/on behalf of Mr Salmond. The others present in my home throughout - though only involved in part of the discussion - were my Chief of Staff, Geoff Aberdein and Duncan Hamilton (who I believe was acting in a legal capacity for Mr Salmond). I had not been aware in advance that Mr Hamilton would be in attendance. My recollection is that Mr Salmond, Mr Aberdein and Mr Hamilton were present in my home for an hour or two. My Chief of Staff was there longer as we had other matters to discuss.

At the meeting, Mr Salmond shared the details of the complaints with me and gave me his response to them - part of this was that he had previously apologised for an aspect of one of them. He also told me that he intended to seek a process of mediation with the complainers. As it was clear to me then that these were complaints under the Scottish Government's Procedure, I knew I had no role and would not be made aware by the Permanent Secretary until any investigation concluded. I was clear to Mr Salmond that I would not intervene.

23 April

The call was initiated by Mr Salmond. My Chief of Staff was in the room with me during this call but not on the line. I think it lasted around 10/15 minutes in

total. 7 June

Mr Salmond requested this meeting. I initially declined but, for reasons set out below, later agreed to it. Mr Salmond and I were the only attendees. My Chief of Staff was aware of the meeting but not present - though she did interrupt to bring it to an end as I had other matters to attend to.

14 July

This meeting should probably be described, for the following reasons, as initiated partly by Mr Salmond and partly by [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Mr Salmond and I were the only attendees at the meeting on 14 July. I think the meeting lasted around an hour.

18 July

This call was initiated by me. No one else was on the line or present during it. It lasted around 10/15 minutes.

Question 5

After the meeting of 2 April, it was not my intention to meet with or speak to Mr Salmond about the matter again.

My reason for agreeing to the call on 23 April is not dissimilar to the reasons I agreed to the 2 April meeting.

When he contacted me on 22 April, I again thought it possible that he was intending to respond in a way that would make the matter public. To explain, it would have been very much in character for him to have made a bold public declaration about the complaints made against him in order to, as he would see it, 'take control of the story'. This could have been along the lines of 'I'm standing down from SNP while I fight to clear my name' or even a partial mea culpa 'I've made mistakes, but I'm not guilty of what I am accused of'. Back then, this is what I assumed he would eventually do.

As Party Leader, I was keen not to be blindsided by such a development, and that is why I agreed to the call.

However, on the call he asked me to advise the Permanent Secretary that I knew of the investigation and persuade her to accede to his request for mediation. I told him emphatically that I would not do so.

When he contacted me on 31 May seeking a meeting, I initially resisted. I still thought it possible that he might 'go public', but the content of our conversation on 23 April and the tenor of his messages to me on 31 May/1 June made me think this was unlikely at that stage.

Therefore, my intention was to decline this meeting request.

However, the tone and content of his message of 3 June changed my view of the matter. The tone of it seemed almost intimidatory and the content made clear he was considering legal action. As a result, I decided to inform the Permanent Secretary.

This was not a decision I took lightly - as I set out in my general statement and below, my decision not to inform the Permanent Secretary of my knowledge, also not taken lightly, had been about protecting the integrity and confidentiality of the process.

I decided to make it known to him that I had informed the Permanent Secretary, and make clear again that I would not intervene as he wanted me to. I indicated to the Permanent Secretary in my letter to her that I intended to have such a conversation with him.

I felt it important to do this, firstly, because Mr Salmond can be persistent and will often interpret conversations or messages in a way that best suit his interests. I wanted to leave no room for misinterpretation.

Also, I believed it highly likely that our paths would cross towards the end of that week at the SNP Conference (as it turned out, I don't think he did attend), and I considered that speaking to him in a planned way was better than him trying to 'corner' me.

As for the content of the meeting on 7 June, I advised him of the action I had taken and made clear again that I was not prepared to intervene in the process. He wanted to give me a document to take away which I believe was a legal opinion he had obtained. I declined to do so. He stated his intention to take legal action if necessary. I expressed an opinion that given the seriousness of the complaints he should consider addressing the substance of them.

By the time of the meeting on 14 July, I was again concerned that the matter might become public. As set out above, I always thought it possible, even likely, that this was the course Mr

Salmond would ultimately take. And had he taken legal action - which I knew he was considering - this could also have put matters into the public domain.

At that meeting, he told me he was asking the Scottish Government to agree a process of arbitration. For reason that I didn't understand then - and don't understand now - he believed I was blocking this. I told him that wasn't so as I had no involvement in the process.

I suggested again that he should address the substance of the complaints rather than simply focusing on procedure.

Although he indicated he would reflect on this, he was focused on his request for arbitration and seeming unwilling to accept that I would not put pressure on the Permanent Secretary to accede to it.

By this time, it was clear that my relationship with Mr Salmond was breaking down. He was clearly upset and angry that I was not assisting him to achieve the outcome he wanted.

I was also upset with him. The nature of the complaints against him and the account he had given me of one of them had badly shaken my faith in him.

However, in spite of that, I did not want our relationship to break down completely. He had been my friend and colleague for 30 years.

It was this that prompted my call to him on 18 July. I wanted to draw a line under our contact about the matter. I was also was about to take a short summer break and I didn't want it interrupted by contact from him. However, I think I was also hoping to make him understand and accept why I couldn't and wouldn't intervene.

Question 6

I advised the Permanent Secretary of the meeting on 2 April and the call on 23 April, in my letter to her of 6 June 2018 (I do not personally hold a copy of this letter - it is held by the Scottish Government and I understand that it has been provided to you by the Permanent Secretary).

My letter indicated that I intended to speak to Mr Salmond again, which I did on 7 June. I later told the Permanent Secretary that I had done so, though we did not have any detailed discussion about it.

I advised her on 16 July of my meeting with Mr Salmond on 14 July and made her aware of his belief that I was blocking arbitration. I made clear to her again that I had no view on the matter and the decision was hers alone. I also told her - I think on my return from annual leave - that I had spoken to him on the phone on 18 July, but I did not discuss the details.

The Permanent Secretary wrote to me on 17 August 2018 informing me that she intended to seek [REDACTED]

She then wrote to me on 22 August 2018 - in line with the Procedure - informing me that she had concluded the investigation, upheld certain complaints and referred the matter to the police.

I assume the letters of 17 and 22 August will be provided to you by the Permanent Secretary if required.

At every stage of my contacts with Mr Salmond I considered the obligations of the Ministerial Code - and my obligations as First Minister more generally. I gave particular consideration to the Code after the meeting on 2 April and discussed this with my Chief of Staff.

It seemed to me then - and I believe this to be the case now - that the Code does not envisage or provide for the particular circumstances of the situation I was faced with. In truth, it felt to me that I was in a Catch 22 situation - had I relied on the relevant parts of the Code, I would have compromised the confidentiality and independence of the process. And if I decided - as I did because I consider it to be the case - that the Code does not provide for the circumstances of this situation, I could find myself accused of breach, as indeed has happened. The judgment I made was that the integrity, independence and confidentiality of the process was paramount.

To explain more fully, the relevant sections of the Ministerial Code, which I consider to be sections 4.22 and 4.23, seek to guard against undisclosed outside influence on decisions that Ministers are involved in and likely to have an influence on. It seemed to me that this was the opposite situation. This was a decision I was excluded from - indeed not meant to know about at all - and it seemed to me that the risk of inadvertently and unintentionally influencing it would arise if those undertaking the investigation became aware of my knowledge of it.

Further, according to my reading of these sections of the Code, my contact with Alex Salmond - once notified - would have had to be made public. There would have been media interest had a meeting between me and Alex Salmond appeared in my published diary, and it was not clear to me how I could have addressed the questions that would have been asked, without in the process compromising the confidentiality of the process.

My judgment, therefore, was that the best way to protect the process - in the interests of the complainers, the government and Mr Salmond himself, was not to make my knowledge of it known. This judgment changed when I had reason to believe that legal action against the government was being considered.

Question 7

I discussed matters with my Chief of Staff throughout - in particular in relation to the Ministerial Code. I did not ask the Permanent Secretary, any civil servant or other special adviser for advice. I would point out that this was in the context of seeking to protect the confidentiality of the process.

I hope I have addressed all your questions. I am, of course, happy to expand on any point should you find it helpful and to discuss all matters further in interview with you.

Your sincerely

NICOLA STURGEON MSP

ANNEX A

Alex Salmond told me on 2 April 2018 at a meeting at my home that complaints against him were being investigated under the Procedure. At that meeting, he showed me a copy of the letter he had received outlining the detail of the complaints.

As has been reported already, four days earlier - 29 March 2018 - I had spoken with Geoff Aberdein (former Chief of Staff to Alex Salmond) in my office at the Scottish

Parliament. Mr Aberdein was in Parliament to see a former colleague and while there came to see me.

I had forgotten that this encounter had taken place until I was reminded of it in, I think, late January/early February 2019.

For context, I think the meeting took place not long after the weekly session of FMQs and in the midst of a busy day in which I would have been dealing with a multitude of other matters.

However, from what I recall, the discussion covered the fact that Alex Salmond wanted to see me urgently about a serious matter, and I think it did cover the suggestion that the matter might relate to allegations of a sexual nature.

[REDACTED]

The impression I had at this time was that Mr Salmond was in a state of considerable distress, and that he may be considering resigning his party membership.

However, while I suspected the nature of what he wanted to tell me - for reasons set out below - it was Alex Salmond who told me on the 2 April that he was being investigated under the Procedure - and what the detail of the complaints was. It is this meeting - due to the nature of the information shared with me at it - that has always been significant in my mind.

As stated above, I suspected the reason Alex Salmond wanted to see me on April 2 was that he was facing an allegation of sexual misconduct.

Although my contact with Mr Aberdein on 29 March 2018 may have contributed to that suspicion, it was not the only factor.

For example, in early November 2017, the SNP received an enquiry from Sky News about allegations of sexual misconduct on the part of Alex Salmond.

I spoke to Mr Salmond about this allegation at the time. He denied it and, as it happened, Sky did not run a story about it at that time. Since the identity of the individuals was not made known to us and they did not approach the SNP directly, there was no further action that it would have been possible to take.

However, even though he assured me to the contrary, all of the circumstances surrounding this episode left me with a lingering concern that allegations about Mr Salmond could materialise at some stage.

It is reasonable to ask why, if I suspected the nature of what he wanted to speak to me about on 2 April, I nevertheless agreed to the meeting.

The answer is both political and personal.

I thought Mr Salmond may be about to resign from the SNP and that, as a result of this or other aspects of how he intended to handle the matter he was dealing with, the party could have been facing a public/media issue that we would require to respond to.

As Party Leader, I considered it important that I knew if this was in fact the case in order that I could prepare the party to deal with what would have been a significant issue.

There is also the personal aspect. Mr Salmond has been closer to me than probably any other person outside my family for the past 30 years, and I was being told he was very upset and wanted to see me personally.

To return to the meeting on 2 April 2018, although others were present, Mr Salmond initially asked to see me privately.

He advised me that he was being investigated under the Procedure and showed me a copy of the letter he had received.

Notwithstanding the suspicions I had harboured going into this meeting, I was shocked and upset by the reality of what I read.

He gave me his reaction to the complaints - in the main he denied them, though in relation to one matter he said that he had previously apologised and considered it out of order for it to be raised again - and said that it was his intention to seek a process of mediation between himself and the complainers.

It was also clear - contrary to what I had anticipated - that he did not intend to resign his party membership or do anything to make the matter public at that stage.

I made clear to him that I had no role in the process and would not seek to intervene in it. I took no action as a result of this meeting.

Mr Salmond sent me a message on 22 April 2018 asking to speak to me by phone.

As previously advised to Parliament, I spoke to him by phone on 23 April (the substantive call took place early evening after a call in the morning had to be aborted due to poor signal).

He asked me if I would make the Permanent Secretary aware that I knew about the investigation and encourage her to accept his request for mediation.

I said that I was not willing to do so. A special adviser was in the room with me during this call, though not on the line.

Mr Salmond sent me a message on 31 May 2018 asking to meet. I did not agree to a meeting at that time.

Mr Salmond sent me a further message on 3 June 2018.

Both the tone and content of this message led me to conclude that legal action by Mr Salmond against the Scottish Government was a serious prospect.

I decided that I should make the Permanent Secretary aware of this, and I wrote to her on 6 June 2018.

At this juncture, it may be helpful to briefly set out for the Committee why I had not previously informed the Permanent Secretary of my contact with Alex Salmond or my knowledge of the investigation.

The relevant sections of the Ministerial Code (4.22 and 4.23) seek to guard against undisclosed outside influence on decisions that Ministers are involved in. It seemed to me that this was the opposite situation. This was a decision I was excluded from and it seemed to me that the risk of inadvertently and unintentionally influencing it would arise if those undertaking the investigation were aware of my knowledge of it.

The risk - even if theoretical and subconscious - would be that considerations of what I might think would influence the decisions taken.

Further, according to my reading of these sections of the Code, my contact with Alex Salmond - once notified - would have had to be made public. This could have compromised the confidentiality of the process.

My judgment, therefore, was that the best way to protect the process was not to make my knowledge of it known. This judgment changed when I had reason to believe that legal action against the government was being considered.

Having decided to write to the Permanent Secretary, I agreed to meet Mr Salmond and sent him a message to this effect on 5 June 2018.

The references in this message to 'what I need to do' and 'update' refer to my decision to write to the Permanent Secretary.

I intended to make him aware that I had done so and, in so doing, make clear again that I would not intervene in the process.

My letter to the Permanent Secretary advises her that I intended to do this. As advised to Parliament, this meeting took place in Aberdeen on 7 June 2018. No one else was present at this meeting.

My other reason for wanting to meet with him proactively at this stage was the SNP conference that was about to take place over the following days in Aberdeen. I assumed he would be there (though as it turned out, I don't think he did attend) and I didn't want to be 'cornered' by him during it.

Mr Salmond sent me a further message on 5 July

2018. I did not respond in any way to this message.

The next contact between Mr Salmond and I was on 13 July 2018, which led to our third and final meeting being arranged for 14 July at my home.

By this time, I was again anxious - as Party Leader and from the perspective of preparing my party for any potential public issue - to know whether his handling of the matter meant it was likely to become public in the near future.

It was clear at the meeting that he was still seeking a process of arbitration around his concerns about the procedure.

He had formed a belief that it was me who was blocking arbitration. I told him that was not the case and I was not involved in the decision.

I also suggested to him that given their seriousness, he should engage on the substance of the complaints and not just focus on procedure.

Mr Salmond sent me further messages on 15 and 16 July 2018. The message of 15 July is Mr Salmond's interpretation of me saying that I was not involved in the decision.

On 16 July, I made the Permanent Secretary aware of the meeting on 14 July 2018 and the subsequent messages. I also made her aware of Mr Salmond's belief that I was blocking arbitration.

Given the risk of legal action, I did not want any suggestion that an opinion attributed to me (which I hadn't expressed) was influencing decisions I had no part in.

I reiterated to her that she must reach whatever decisions she considered appropriate and I did not seek to influence her in any way.

As advised to Parliament, I also spoke to Mr Salmond on the phone on 18 July 2018. I wanted to draw a line under our contact. I was also about to take a two day summer break and did not want him trying to contact me during it. I have not spoken to Mr Salmond since.

However, later on 18 July, he sent me a copy of a letter he had received from the Scottish Government. I did not respond to this message.

He sent me a further message on 20 July 2018. Again, I did not respond. I have had no contact with Mr Salmond since.

ANNEX B

[22/04/2018, 20:31:29] Alex Salmond: it would be very helpful if I could call you on WhatsApp 10.30am and 12 noon tomorrow

[22/04/2018, 21:05:25] Nicola Sturgeon: I'll be in the car until 11 on way to Inverness - so 10.30 will be ok. I'll not be free again after that until 12.30/1. There will be others in car so I'll not be able to talk openly...it'll be later in day before I can be in private.

[22/04/2018, 22:03:57] Alex Salmond: In which case I will Phone just after 10.30am with update and we can perhaps speak properly later on.

[31/05/2018, 11:24:01] Alex Salmond: In Glasgow tomorrow - could we meet?

[31/05/2018, 11:39:09] Nicola Sturgeon: Tomorrow's very difficult - is it urgent?

[31/05/2018, 11:45:01] Alex Salmond: Next few days. I could do tomorrow evening or Monday from lunchtime onwards.

[31/05/2018, 11:46:29] Nicola Sturgeon: The only time I could possibly do tomorrow is around 4. Is it about what we spoke about before?

[31/05/2018, 11:56:46] Alex Salmond: Yes

[31/05/2018, 11:56:59] Alex Salmond: 4 is fine - same place?

[31/05/2018, 17:07:08] Nicola Sturgeon: Tomorrow is actually proving tricky given other stuff I've got on. I'm trying to juggle a couple of things - will confirm later/in morning if 4pm possible and if not suggest alternative.

[31/05/2018, 19:23:01] Alex Salmond: I suggest just two of us - I can leave you with some material to digest over weekend - Meeting itself need not take long but tomorrow would be best if poss.

[01/06/2018, 07:51:32] Nicola Sturgeon: Sorry but I just can't do today - I don't have time to get home given other stuff. Happy to speak on phone over weekend and see what else is possible.

[01/06/2018, 09:36:59] Alex Salmond: Phone not appropriate - there is material you need to see and assess privately. Can I come to you Sunday or very first thing Monday?

[01/06/2018, 13:37:54] Nicola Sturgeon: I'm not at home at weekend and in Aberdeen on Monday. In any event, I'd prefer a quick chat first to understand the purpose of giving me material. We've already spoken about why I think me intervening is not right thing to do. Happy to talk on what's app at some point over weekend.

[03/06/2018, 10:15:00] Alex Salmond: My recollection of our Monday 2 April meeting was rather different. You wanted to assist but then decided against an intervention to help resolve the position amicably. Now is different. I was intending to give you sight of the petition for JR drafted by senior counsel. You are a lawyer and can judge for yourself the prospects of success which I am advised are excellent. This will follow ANY adverse finding against me by the PS in a process which is unlawful. You are perfectly entitled to intervene

if it is brought to your attention that there is a risk of your Government acting unlawfully in a process of which

you had no knowledge. Indeed it could be argued that is your obligation under the Scotland Act is to ensure that all government actions are consistent with Convention undertakings

The JR will be rough for me since the hearing will almost certainly be made public but at least I will have the opportunity to clear my name and good prospects of doing so - but for the Government? One further thing to consider. Thus far we have been able to confine evidence offered to the general (and mostly ridiculous) matters. This has had the benefit of keeping everything well clear of current administration. When we go to Court we will have to produce evidence to demonstrate prior process (which incidentally the PS has admitted!). If you want to discuss privately then I can come to you in the North East on Monday.]

[05/06/2018, 14:02:58] Nicola Sturgeon: Hi - I have been considering your message and what I need to do in light of it. If you still want to meet, I can do tomorrow evening in Edinburgh and update you then. N

[05/06/2018, 19:24:32] Alex Salmond: Happy to meet - soonest I can get to Edinburgh is around 8.30. I take it this is totally informal, one to one.

[05/06/2018, 19:42:38] Nicola Sturgeon: Ok - happy for it to be one to one - will have to be either parliament or Bute, whatever you prefer. The alternative if its easier is Aberdeen on Thursday night - I'll be there from around 8, staying in hotel somewhere near beach ballroom I think.

[05/06/2018, 20:08:30] Alex Salmond: Yes Thursday much better, thanks. I'll be there for 8.30 to give you time to settle in.

[05/06/2018, 20:12:37] Nicola Sturgeon: Ok. It's the Hilton hotel at the beach.

[05/06/2018, 20:17:58] Alex Salmond: Grand

[07/06/2018, 19:00:28] Nicola Sturgeon: You should go to the Platinum reception at the back of hotel later. There's a private room arranged there for us to meet in.

[07/06/2018, 19:07:45] Alex Salmond: OK thanks. Traffic was bad but now well on the way. Should arrive c 8.40 and will give 5 minute warning on approach.

[07/06/2018, 19:09:23] Nicola Sturgeon: I'm running late too - but should be there just before you

[07/06/2018, 19:14:01] Alex Salmond: OK shall we make it 8.50 so we are not rushing

[07/06/2018, 19:25:49] Nicola Sturgeon: I'm ok for as soon as you get there

[07/06/2018, 19:36:24] Alex Salmond: Grand

[07/06/2018, 20:46:30] Alex Salmond: Now in Aberdeen 5 minutes or so

[05/07/2018, 21:18:40] Alex Salmond: Nicola. I have slept on the content of the latest letter from the PS rejecting arbitration. Two points I want to make to you privately. Firstly, the explanation given in the letter is that arbitration is rejected because the SG is confident in the legality of the process. With respect, that entirely misses the point. The SG may well believe it is lawful. My Senior Counsel believes it is unlawful. That's the whole point of the arbitration.

The legality will have to be resolved either in private (in a confidential and binding arbitration)

or in public at the Court of Session. The SG, and you, have everything to gain from arbitration. If my legal advice is wrong, I will accept that and the current process proceeds. If the SG legal advice is wrong, you discover that without losing in a public court. Adopting an arbitration process also guarantees confidentiality for the complainers, regardless of what happens.

Secondly, the PS has now intimated that an FOI has been submitted. The SG response to that request is of the utmost importance. Confirmation of even the existence of a specific complaint will be sufficient to start a process which leads to the near certainty of these matters becoming public. My legal advice is that a "neither confirm or deny" response which avoids acknowledging the existence of any documents can be issued under section 18 of the FOI Act which covers S38 (1) (b) {personal information}. It is critical that this happens. There remains a way to resolve this but it requires the PS to be encouraged to accept that confidential arbitration offers the best solution and to ensure that the FOI is carefully handled. I hope you will do so but time is now very short.]

[13/07/2018, 11:01:08] Alex Salmond: Grateful for your message [REDACTED] Happy to meet privately. Understand you are away from Monday so given developments presumably this weekend best? I have material which it is important for you to see. I will happily come to you.

[13/07/2018, 11:22:38] Nicola Sturgeon: I'm supposedly on leave from Monday but not going away - I'll be at home so could do next week if that's easier (except Thursday/Friday). Weekend is a bit busy with one thing and another - late tomorrow afternoon probably only time that works. Let me know what you prefer.

[13/07/2018, 14:03:32] Alex Salmond: Great - can we make it tomorrow late afternoon then - I am just rearranging something and will confirm asap.

[13/07/2018, 15:13:10] Alex Salmond: Tomorrow confirmed for late afternoon. - give me your best time and place. Thanks.

[13/07/2018, 15:56:10] Nicola Sturgeon: It'll have to be my house - I should be home by 4 so that's best time. Just so you know, I have to go out again around 6.

[13/07/2018, 15:58:44] Alex Salmond: 4 it is then

[13/07/2018, 15:59:27] Nicola Sturgeon: Ok

[14/07/2018, 15:45:59] Alex Salmond: Ten minutes

away

[15/07/2018, 22:42:44] Alex Salmond: Many thanks for making the time yesterday. I am grateful that you will correct the impression being given that you are against arbitration or that it is somehow against your interests. I know that you need to reflect further on how to progress things beyond that and am not blind to the difficulty of legal advice being suspicious of arbitration. I am genuinely at a loss as to what the downside is for anyone, complainers, SG or me or you. The reasons given to date have been meaningless or more recently just a misrepresentation of your position. If there are good legal reasons then surely they can be set out for you/us. I will wait to hear how you are able to proceed. I am also giving much thought to your advice and thinking deeply about how arbitration on process might open up the space and opportunity to address and resolve the underlying matters, as far as is possible, to everyone's satisfaction.]

[16/07/2018, 14:57:50] Alex Salmond: Just in from Duncan to me - for your eyes only

"Senior counsel for SG has just told us he is going to take instruction direct from PS on the

question of what attitude he is to take to arbitration. This is exactly the point at which the FM's

position supporting at least the exploration of arbitration can be most influential. Otherwise we are hitting a wall in discussions. Immediate clarification of her position with the PS is required. As in, immediately.”]

[18/07/2018, 20:50:37] Alex Salmond: T: 0131-244 4026

E: perm.sec@gov.scot

Mr Callum Anderson Levy and McRae Pacific House

70 Wellington Street GLASGOW

G2 6UA

Private and Confidential 18 July 2018

Dear Mr Anderson

Thank you for your recent letters, in which you have raised your concern about the fairness of the Scottish Government Procedure. I want, first of all, to assure your client that I am approaching these important issues with the greatest of care and with an open mind. It remains the view of the Scottish Government that our Procedure is fair and legally sound. We have ensured from the outset that your client had every opportunity to provide a statement of his recollection of the events described in the “causes for concern” set out in my letter of 7 March. We granted a number of extensions to the initial deadline for such a statement to be provided. Your client was also offered the opportunity to speak to the Investigating Officer directly but he declined to do so.

Your client has chosen not to provide a substantive response to the complaints made by Ms A and Ms B (causes for concern A – I) although he has made clear his denial that any harassment took place. Your letter of 26 April included quotations “in short none of the allegations are admitted” and “I categorically deny that I have ever harassed any civil servant”.

Although you continue to express concern about the overall fairness and legality of the Procedure your letter of 26 April did include a substantive response to causes for concern J – K. That letter also identified 5 witnesses to be interviewed - limited to those causes for concern only.

Contact information for those witnesses was provided by you on 8 May. Witnesses were interviewed by the Investigating Officer and their statements were finally agreed by all parties by 28 June after a number of postponements and delays.

You have proposed arbitration in relation to the Procedure and explained why you consider it to be appropriate. The Scottish Government has explained in previous letters and in exchanges between legal representatives why we do not agree. However, for completeness and to ensure our position is understood we make the following points.

First, we consider that we have given your client a fair opportunity to address the complaints, and that the procedure which we have followed is a fair one.

- We do not consider that arbitration would be appropriate to the circumstances. This is an investigation of serious complaints made by civil servants involving a former Minister.

Submitting the process to an external decision maker would not be appropriate.

- As the decision maker, I have to balance a range of interests, and to ensure a Procedure which is fair both to your client and to the complainers. Arbitration of the SG process would not involve the complainers.

- As decision maker I have a duty to bring the investigation to a conclusion as efficiently and timeously as possible. Arbitration would cause unavoidable further delay.

- However tightly a remit were drawn, it seems unlikely that it would be possible to separate the procedural points which you have raised from issues of substance or content in a way which would allow those procedural concerns to be addressed.

Your client has provided a substantive response to causes for concern J – K. However, it remains my view that his interests and those of the investigation as a whole would best be served by him providing a substantive response to each of the causes for concern – and it is a matter of regret that he has chosen not to do so.

Consequently I am offering your client, even at this late stage, a final opportunity to provide any further representations about the complaints made by Ms A and Ms B. Given the time that has elapsed since first notifying your client of the investigation you must confirm if your client wishes to take up this opportunity no later than 11 am on 19 July. Any further representations must be received by 3 pm on Friday, 20 July if they are to form part of my consideration.

Should your client choose not to take up this final opportunity I shall proceed to consider the report on the basis of the information he has already provided and will write to you again to inform you of the outcome.

Yours sincerely

LESLIE EVANS

[18/07/2018, 20:52:21] Alex Salmond: As you see the time allowed is tomorrow morning at 11am

[20/07/2018, 22:37:18] Alex Salmond: A full rebuttal of all complaints went in by the deadline today. Let us see how it is judged.

ANNEX C

4 August 2020

Dear Convener

I refer to your letter of 7 July.

Please treat this covering reply and attached annexes as my response to the questions posed in your letter.

With regard to paragraph 5 of Annex B of your letter, noting that “the Committee and all participants must comply with the court order made by the Lord Justice Clerk, Lady Dorrian, on 10 March 2020”, I have excluded from this letter any information that, as far as I am aware, might disclose the identity of any of the complainers in HMA v AEA Salmond.

However, I do not know if my submission would pose a risk in ways I am not aware of, or if other evidence submitted would risk jigsaw identification.

Therefore, prior to publication of all or part of this submission, I would like assurance on the steps the Committee has taken to ensure that nothing in it, either on its own or taken together with anyone else’s evidence, would risk identification.

The Committee previously asked me to retain all information relevant to the Inquiry. I enclose at Annex B a transcript of WhatsApp messages between myself and Alex Salmond. This is the only information I hold relevant to the Committee’s Inquiry.

I have no objection, as regards my own interests, to the publication of these messages in full.

However, I seek an assurance from the Committee that any issues relating to Alex Salmond’s data rights or legal privilege will be properly considered before publication, including whether his consent is required.

Subject to the above, I will be happy to discuss any aspect of my response with the Committee in oral session.

I have structured my response in line with your paragraph headings. Please note that any and all involvement I had in my capacity as First Minister in the Complaints Policy Development, Complaints Handling Procedure and Judicial Review - and any relevant documentation in respect thereof - will be included in the Scottish Government’s submissions to the Committee.

The information I provide in this response relates to my actions in a party/personal capacity. This includes my decision to advise the Permanent Secretary of information I acquired in my party/personal capacity, where I considered that the interests of the Scottish Government required it. I refer in this submission to the letter I wrote to the Permanent Secretary on 6 June 2018. A copy of this should be requested from the Scottish Government.

COMPLAINTS POLICY DEVELOPMENT

As a personal reflection and for context, the development of the Scottish Government’s “Handling of harassment complaints involving current or former Ministers” (hereinafter referred

to as “the Procedure”) took place against the backdrop of the #MeToo movement, which started in late 2017 in the wake of allegations extending back over several years about certain high profile individuals.

The concerns being expressed globally at that time were that too many organisations did not have procedures in place that allowed allegations of sexual harassment to be raised or properly investigated; that women’s voices were often not heard or listened to; that organisations too often closed ranks in defence of men accused of inappropriate behaviour; and that it could be particularly difficult for ‘historic’ allegations to be raised.

The media had also reported concerns about the prevailing culture in Holyrood.

The Scottish Government was just one of many organisations across the globe confronted with these questions at that time, and considering its procedures and culture in light of them.

You will also recall that a Scottish Government minister resigned in early November 2017 over concerns about sexually inappropriate conduct.

As First Minister, I wanted to ensure that the Scottish Government had robust procedures in place to allow any concerns or complaints by those in its employment to be properly and fairly considered, without fear or favour and regardless of the seniority or political affiliation of any individuals who might be the subject of such concerns or complaints.

My role as First Minister in the development of the Procedure will be set out in the Scottish Government’s submission to the Committee.

COMPLAINTS HANDLING PROCEDURE

Any involvement in my role as First Minister will be included in the Scottish Government submission on the handling of the complaints.

I provide further information in a personal/party capacity in Annex A.

JUDICIAL REVIEW

The detail of my involvement in decisions associated with the Judicial Review will be set out in the Scottish Government’s submission to the Committee.

MINISTERIAL CODE

The Committee is aware that I have made a self referral to the independent panel of advisers on the Ministerial Code.

However, I address the requests in this section in Annex A to this letter.

Annex B includes communications in the form of WhatsApp messages between me and Alex Salmond.

My letter to the Permanent Secretary dated 6 June 2018 should be requested from the Scottish Government.

PARTY POLITICAL MATTERS

I had no communication with the SNP relevant to the subject matter of the Committee's inquiry, other than approving the party's public comments after the matter became public in August 2018.

My husband was obviously aware of Mr Salmond's presence in our home on 2 April and 14 July 2018, but he was not present at the meetings and I did not share the detail with him.

As I outline in Annex A, when I agreed to meet with Alex Salmond on 2 April 2018, I believed that what he was about to tell me may require a public response from the SNP. Indeed, I suspected that he may be about to resign from the SNP.

In the event, it was clear to me at the 2 April meeting that his approach to handling the matter was not likely to result in it becoming public at that stage.

Accordingly, there was nothing for me to alert the SNP to, and it was not appropriate for me to disclose the fact or detail of the complaints and investigation under the Procedure.

In relation to ensuring that there is a clear distinction between my role as First Minister and my role in the SNP, I have regard to the terms of both the MSP and Ministerial Codes of Conduct.

My Special Advisers abide by the terms of the Special Advisers' Code of Conduct and the Civil Service Code.

In relation to the question about Scottish Government communication and records, this is covered by Scottish Government procedures on the recording and retention of information.

The SNP communicates with its post holders in the normal ways - including meetings, emails and phone calls.

The safeguard to ensure this is distinct from government communications are the relevant Codes that MSPs, Ministers and Special Advisers are bound by.

To be clear, members of the public often email my SNP or MSP accounts about government business and I forward these to my ministerial private office.

On any other occasions when I email my ministerial private office or special advisers from my personal email - eg with diary queries or information requests - these will be to a Scottish Government email account and retained in line with standard procedures.

And all government business, no matter the platform/medium it is conducted on/through, is subject to Freedom of Information legislation.

CULTURE

I had no general concerns at the time about Scottish Government culture from 2008-14, and certainly not about sexual harassment. However, government is a high pressure environment. Mr Salmond could be challenging to work for and, rightly, he demanded high standards. However, I was present on some occasions when tense situations had to be defused.

Certain matters that I have become aware of through the events of the last couple of years raise - retrospectively - some other concerns.

I have no general concerns about the culture of the Scottish Government now. However, I am not complacent about the potential for instances of inappropriate behavior within a large

organisation. That is why it is important to have clear and robust procedures in place which, subject to any views of this Committee on the Procedure, I believe to be the case.

I have no comment to make on the adequacy of the Civil Service Code. I give some personal reflection on the Ministerial Code in Annex A - however, the adequacy of it is a matter the independent panel will be able to consider.

CONCLUSION

In conclusion, I would like to add the following personal reflections.

The Committee will be considering the Scottish Government's handling of complaints raised under the Procedure. That is, of course, legitimate.

However, the Scottish Government would have had nothing to 'handle' had complaints not been raised about Alex Salmond's conduct.

It was the concerns raised about his conduct - an aspect of which, by his own admission, he apologised for - that gave rise to this matter.

In my view, when these complaints were raised, the Scottish Government had a duty to investigate them and the fact that a mistake was made in the conduct of the investigation does not change that fact. To have swept them under the carpet because of who they related to would have been wrong.

As far as my personal involvement is concerned, over the last couple of years, I have faced accusations of 'conspiring' against Alex Salmond and also of 'colluding' with

him. I reject in the strongest possible terms both of these suggestions.

Indeed it seems to me that what some want to present as 'conspiracy' is in actual fact my refusal to 'collude' or 'cover up'.

In what was a very difficult situation - personally, politically and professionally - I tried to do the right thing. Whether I always got it absolutely right is something I still reflect on, and the Committee will consider, but I sought all along to act in good faith and to strike the right balance of judgment given the difficult issues I was confronted with.

In the light of the #MeToo movement, I sought to ensure that the Scottish Government developed a process that allowed allegations of sexual harassment - including allegations of a historic nature - to be fully and fairly considered.

I did not do this *because* I had a concern (as set out in Annex A) that allegations about my predecessor could materialise. But nor did I, in any way, allow such concern to lead me to limit the scope of the procedure.

I agreed to meet a friend of 30 years when I was told he was in distress and wanted to talk to me about a serious matter.

And it is certainly the case that I was anxious to prepare my Party as far as possible for an issue that, at different stages, I thought could be about to become public.

However, I did not seek to prevent or influence the proper consideration of the complaints.

For the sake of the complainers, the Scottish Government and indeed Alex Salmond himself, I acted in a way that I judged would best protect the independence and confidentiality of the investigation.

However, when I became aware of a serious risk of legal action against my government, I felt I had a duty to make the Permanent Secretary aware of it.

My view throughout was that complaints must be properly and fairly considered, no matter who the subject of them might be, or how politically inconvenient the investigations may be.

And that remains my view, even though the circumstances and consequences of this particular investigation have caused me - and others, in many cases to an even greater extent - a great deal of personal anguish, and resulted in the breakdown of a relationship that had been very important to me, politically and personally, for most of my life.

Lastly, since August 2018 I have taken care to say nothing that could compromise other proceedings, including the Committee's inquiry - even though that has meant being unable to say more about my own actions or challenge misrepresentations about them.

Yours Sincerely

NICOLA STURGEON

From: Somers J (John) <John.Somers@gov.scot>

Sent: 09 October 2020 16:38

To: [REDACTED]

Subject: Letter from the First Minister to Mr James Hamilton

Importance: High

Sensitivity: Confidential

Dear [REDACTED]

Pleased find attached, on behalf of the First Minister, her response to Mr Hamilton's letter of the 8 September.

Grateful if you would confirm receipt.

Many thanks,

John

John Somers

Principal Private Secretary to the First Minister
Scottish Government

Work: [REDACTED]

Mob: [REDACTED]



All e-mails and attachments sent by a Ministerial Private Office to any other official on behalf of a Minister relating to a decision, request or comment made by a Minister, or a note of a Ministerial meeting, must be filed appropriately by the recipient. Private Offices do not keep official records of such e-mails or attachments. Scottish Ministers, Special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

9 October 2020

Dear Mr Hamilton

SCOTTISH MINISTERIAL CODE: SELF REFERRAL

Thank you for your letter of 8 September. Please find enclosed the following:

Annex A: I have provided, as requested, a general statement about my actions and involvement in the matters covered by your remit. Please note that I have also provided this statement to the Scottish Parliament Committee on the Scottish Government Handling of Harassment Complaints (hereinafter referred to as "the Committee").

Annex B: I have enclosed a transcript of WhatsApp messages between myself and Alex Salmond. This information has also been provided to the Committee and I was advised by the clerks that Mr Salmond has asserted legal privilege over the message from him to me dated 16 July 2018 and asked for it to be redacted.

Annex C: A copy of my covering letter to the Committee dated 4 August 2020. The letter is enclosed for completeness. It covers matters that you may consider go beyond your remit but also some information that appears to me to fall within it and which you may find helpful.

As you may be aware, my submission to the Committee has now been published - however, I thought it would be helpful to attach it here for ease of reference.

I will now turn to the specific questions in your letter. Most of them are addressed in the Annexes attached - however, where it seems you are requesting additional information or that I can usefully expand on any points, I will do so below.

Please note that in the Annexes detailed above and in the answers below, I have taken care not to provide any information that would seem to me to risk breaching the order of the High Court in HMA v AEA Salmond. If, as a result, it appears to you that there are questions I am not answering directly, I would be happy to discuss this further with you.

Question 1

All of my contacts with Mr Salmond between 16 January and 18 July 2018 are detailed in Annex A. You will note from that account that after my final conversation with him on 18 July, he sent me two further messages - on 18 and 20 July. These are included in Annex B. I did not respond to these messages.

I can confirm that I have had no contact with Mr Salmond - direct or indirect - since.

Question 2

I met with Geoff Aberdein, former Chief of Staff to Mr Salmond, in my office in Parliament on

29 March 2018. The circumstances and nature of this meeting are set out in Annex A.

He was mainly, as I recall now, seeking to persuade me to meet with Mr Salmond. I think the assumption in my mind at the time of this discussion was that any issues of alleged sexual conduct against Mr Salmond would be related to the matter raised by Sky News in the query a few months earlier.

[REDACTED] this would have meant nothing to me as I had not been aware of any such instance. The reference however makes sense in light of what Mr Salmond told me on 2 April.

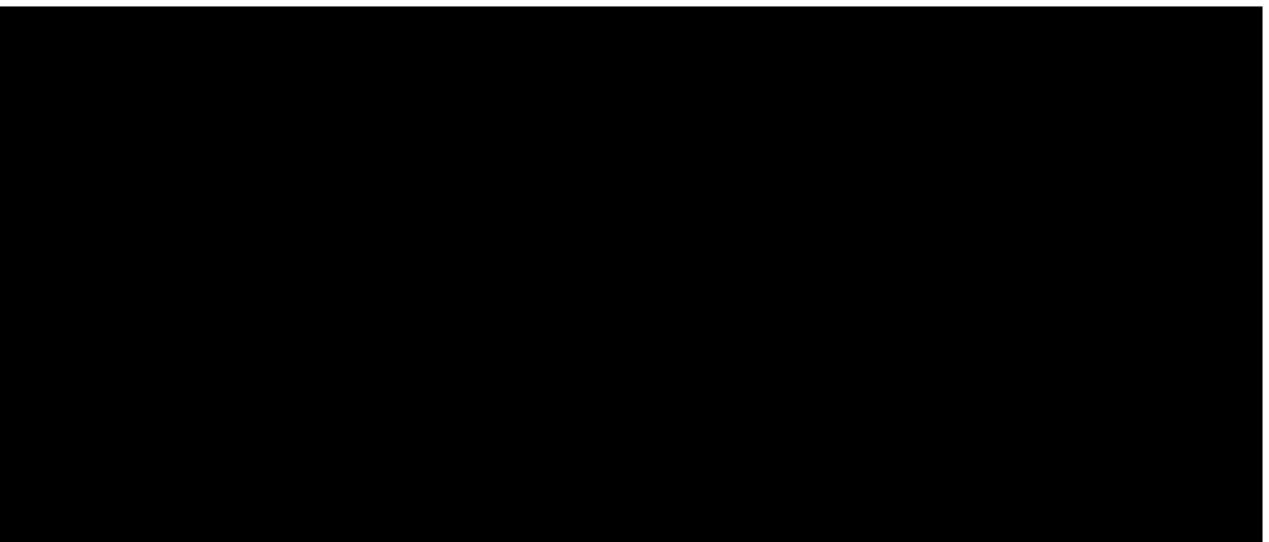
As I set out in Annex A, I had forgotten about this encounter until I was reminded of it in early 2019. Since the publication of my evidence to the Committee, it has been asked of me how it is possible that I could have forgotten such an encounter.

It is obviously not possible for anyone to be certain of the reasons for forgetting an event. But the reasons I think this meeting was not engraved in my mind (beyond the fact that it was an unscheduled meeting in the middle of a busy day) are alluded to in my Committee submission, and it may be helpful for me to expand.

Firstly, by the time I met with Mr Aberdein, I already had what I describe as a 'lingering concern' that allegations may emerge about Mr Salmond. This was as a result of the Sky media query in November 2017. In other words, the meeting was not the first time possible allegations about Mr Salmond had been raised with me - had it been, my memory may have been more vivid. But the second, and perhaps more relevant factor is that my meeting with Mr Salmond himself a few days later on 2 April was so significant. It was then that he told me the details of the actual complaints against him and his response to them. I think it is because this was such a shock to me that the earlier meeting was overwritten in my mind.

Question 3

There were no meetings - other than those I have declared - between anyone representing me and Mr Salmond.





Question 4

A summary of the purpose of, and participation in, each of the contacts is provided in Annex A. The messages at Annex B also include relevant detail. I expand on the purpose of and reasons for each of the contacts in my response to Question 5.

However, I include under this question detail of the following: who initiated each meeting; how long (as far as I can recall) each contact lasted; and who was present.

I did not make a record of any of the contacts. However, I gave a verbal account of each of them to my Chief of Staff.

2 April

This meeting was initiated by/on behalf of Mr Salmond. The others present in my home throughout - though only involved in part of the discussion - were my Chief of Staff, Geoff Aberdein and Duncan Hamilton (who I believe was acting in a legal capacity for Mr Salmond). I had not been aware in advance that Mr Hamilton would be in attendance. My recollection is that Mr Salmond, Mr Aberdein and Mr Hamilton were present in my home for an hour or two. My Chief of Staff was there longer as we had other matters to discuss.

At the meeting, Mr Salmond shared the details of the complaints with me and gave me his response to them - part of this was that he had previously apologised for an aspect of one of them. He also told me that he intended to seek a process of mediation with the complainers. As it was clear to me then that these were complaints under the Scottish Government's Procedure, I knew I had no role and would not be made aware by the Permanent Secretary until any investigation concluded. I was clear to Mr Salmond that I would not intervene.

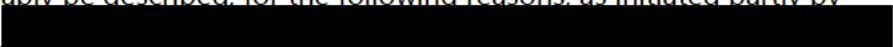
23 April

The call was initiated by Mr Salmond. My Chief of Staff was in the room with me during this call but not on the line. I think it lasted around 10/15 minutes in total.

7 June

Mr Salmond requested this meeting. I initially declined but, for reasons set out below, later agreed to it. Mr Salmond and I were the only attendees. My Chief of Staff was aware of the meeting but not present - though she did interrupt to bring it to an end as I had other matters to attend to.

14 July

This meeting should probably be described, for the following reasons, as initiated partly by Mr Salmond and partly by 





Mr Salmond and I were the only attendees at the meeting on 14 July. I think the meeting lasted around an hour.

18 July

This call was initiated by me. No one else was on the line or present during it. It lasted around 10/15 minutes.

Question 5

After the meeting of 2 April, it was not my intention to meet with or speak to Mr Salmond about the matter again.

My reason for agreeing to the call on 23 April is not dissimilar to the reasons I agreed to the 2 April meeting.

When he contacted me on 22 April, I again thought it possible that he was intending to respond in a way that would make the matter public. To explain, it would have been very much in character for him to have made a bold public declaration about the complaints made against him in order to, as he would see it, 'take control of the story'. This could have been along the lines of 'I'm standing down from SNP while I fight to clear my name' or even a partial mea culpa 'I've made mistakes, but I'm not guilty of what I am accused of'. Back then, this is what I assumed he would eventually do.

As Party Leader, I was keen not to be blindsided by such a development, and that is why I agreed to the call.

However, on the call he asked me to advise the Permanent Secretary that I knew of the investigation and persuade her to accede to his request for mediation. I told him emphatically that I would not do so.

When he contacted me on 31 May seeking a meeting, I initially resisted. I still thought it possible that he might 'go public', but the content of our conversation on 23 April and the tenor of his messages to me on 31 May/1 June made me think this was unlikely at that stage.

Therefore, my intention was to decline this meeting request.

However, the tone and content of his message of 3 June changed my view of the matter. The tone of it seemed almost intimidatory and the content made clear he was considering legal action. As a result, I decided to inform the Permanent Secretary.

This was not a decision I took lightly - as I set out in my general statement and below, my decision not to inform the Permanent Secretary of my knowledge, also not taken lightly, had been about protecting the integrity and confidentiality of the process.

I decided to make it known to him that I had informed the Permanent Secretary, and make clear again that I would not intervene as he wanted me to. I indicated to the Permanent Secretary in my letter to her that I intended to have such a conversation with him.

I felt it important to do this, firstly, because Mr Salmond can be persistent and will often interpret conversations or messages in a way that best suit his interests. I wanted to leave no room for misinterpretation.

Also, I believed it highly likely that our paths would cross towards the end of that week at the SNP Conference (as it turned out, I don't think he did attend), and I considered that speaking to him in a planned way was better than him trying to 'corner' me.

As for the content of the meeting on 7 June, I advised him of the action I had taken and made clear again that I was not prepared to intervene in the process. He wanted to give me a document to take away which I believe was a legal opinion he had obtained. I declined to do so. He stated his intention to take legal action if necessary. I expressed an opinion that given the seriousness of the complaints he should consider addressing the substance of them.

By the time of the meeting on 14 July, I was again concerned that the matter might become public. As set out above, I always thought it possible, even likely, that this was the course Mr Salmond would ultimately take. And had he taken legal action - which I knew he was considering - this could also have put matters into the public domain.

At that meeting, he told me he was asking the Scottish Government to agree a process of arbitration. For reason that I didn't understand then - and don't understand now - he believed I was blocking this. I told him that wasn't so as I had no involvement in the process.

I suggested again that he should address the substance of the complaints rather than simply focusing on procedure.

Although he indicated he would reflect on this, he was focused on his request for arbitration and seeming unwilling to accept that I would not put pressure on the Permanent Secretary to accede to it.

By this time, it was clear that my relationship with Mr Salmond was breaking down. He was clearly upset and angry that I was not assisting him to achieve the outcome he wanted.

I was also upset with him. The nature of the complaints against him and the account he had given me of one of them had badly shaken my faith in him.

However, in spite of that, I did not want our relationship to break down completely. He had been my friend and colleague for 30 years.

It was this that prompted my call to him on 18 July. I wanted to draw a line under our contact about the matter. I was also about to take a short summer break and I didn't want it

interrupted by contact from him. However, I think I was also hoping to make him understand and accept why I couldn't and wouldn't intervene.

Question 6

I advised the Permanent Secretary of the meeting on 2 April and the call on 23 April, in my letter to her of 6 June 2018 (I do not personally hold a copy of this letter - it is held by the Scottish Government and I understand that it has been provided to you by the Permanent Secretary).

My letter indicated that I intended to speak to Mr Salmond again, which I did on 7 June. I later told the Permanent Secretary that I had done so, though we did not have any detailed discussion about it.

I advised her on 16 July of my meeting with Mr Salmond on 14 July and made her aware of his belief that I was blocking arbitration. I made clear to her again that I had no view on the matter and the decision was hers alone. I also told her - I think on my return from annual leave - that I had spoken to him on the phone on 18 July, but I did not discuss the details.

The Permanent Secretary wrote to me on 17 August 2018 informing me that she intended to seek [REDACTED]

She then wrote to me on 22 August 2018 - in line with the Procedure - informing me that she had concluded the investigation, upheld certain complaints and referred the matter to the police.

I assume the letters of 17 and 22 August will be provided to you by the Permanent Secretary if required.

At every stage of my contacts with Mr Salmond I considered the obligations of the Ministerial Code - and my obligations as First Minister more generally. I gave particular consideration to the Code after the meeting on 2 April and discussed this with my Chief of Staff.

It seemed to me then - and I believe this to be the case now - that the Code does not envisage or provide for the particular circumstances of the situation I was faced with. In truth, it felt to me that I was in a Catch 22 situation - had I relied on the relevant parts of the Code, I would have compromised the confidentiality and independence of the process. And if I decided - as I did because I consider it to be the case - that the Code does not provide for the circumstances of this situation, I could find myself accused of breach, as indeed has happened. The judgment I made was that the integrity, independence and confidentiality of the process was paramount.

To explain more fully, the relevant sections of the Ministerial Code, which I consider to be sections 4.22 and 4.23, seek to guard against undisclosed outside influence on decisions that Ministers are involved in and likely to have an influence on. It seemed to me that this was the

opposite situation. This was a decision I was excluded from - indeed not meant to know about at all - and it seemed to me that the risk of inadvertently and unintentionally influencing it would arise if those undertaking the investigation became aware of my knowledge of it.

Further, according to my reading of these sections of the Code, my contact with Alex Salmond

- once notified - would have had to be made public. There would have been media interest had a meeting between me and Alex Salmond appeared in my published diary, and it was not clear to me how I could have addressed the questions that would have been asked, without in the process compromising the confidentiality of the process.

My judgment, therefore, was that the best way to protect the process - in the interests of the complainers, the government and Mr Salmond himself, was not to make my knowledge of it known. This judgment changed when I had reason to believe that legal action against the government was being considered.

Question 7

I discussed matters with my Chief of Staff throughout - in particular in relation to the Ministerial Code. I did not ask the Permanent Secretary, any civil servant or other special adviser for advice. I would point out that this was in the context of seeking to protect the confidentiality of the process.

I hope I have addressed all your questions. I am, of course, happy to expand on any point should you find it helpful and to discuss all matters further in interview with you. Your sincerely

NICOLA STURGEON MSP

ANNEX A

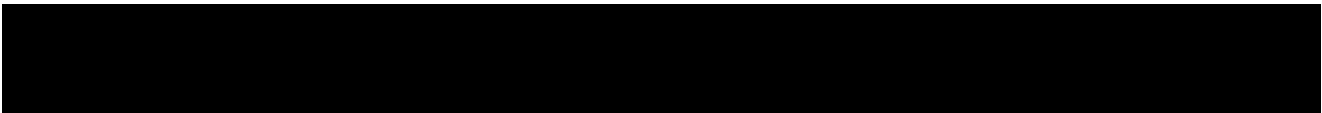
Alex Salmond told me on 2 April 2018 at a meeting at my home that complaints against him were being investigated under the Procedure. At that meeting, he showed me a copy of the letter he had received outlining the detail of the complaints.

As has been reported already, four days earlier - 29 March 2018 - I had spoken with Geoff Aberdein (former Chief of Staff to Alex Salmond) in my office at the Scottish Parliament. Mr Aberdein was in Parliament to see a former colleague and while there came to see me.

I had forgotten that this encounter had taken place until I was reminded of it in, I think, late January/early February 2019.

For context, I think the meeting took place not long after the weekly session of FMQs and in the midst of a busy day in which I would have been dealing with a multitude of other matters.

However, from what I recall, the discussion covered the fact that Alex Salmond wanted to see me urgently about a serious matter, and I think it did cover the suggestion that the matter might relate to allegations of a sexual nature.



The impression I had at this time was that Mr Salmond was in a state of considerable distress, and that he may be considering resigning his party membership.

However, while I suspected the nature of what he wanted to tell me - for reasons set out below - it was Alex Salmond who told me on the 2 April that he was being investigated under the Procedure - and what the detail of the complaints was. It is this meeting - due to the nature of the information shared with me at it - that has always been significant in my mind.

As stated above, I suspected the reason Alex Salmond wanted to see me on April 2 was that he was facing an allegation of sexual misconduct.

Although my contact with Mr Aberdein on 29 March 2018 may have contributed to that suspicion, it was not the only factor.

For example, in early November 2017, the SNP received an enquiry from Sky News about allegations of sexual misconduct on the part of Alex Salmond.

I spoke to Mr Salmond about this allegation at the time. He denied it and, as it happened, Sky did not run a story about it at that time. Since the identity of the individuals was not made known to us and they did not approach the SNP directly, there was no further action that it would have been possible to take.

However, even though he assured me to the contrary, all of the circumstances surrounding this episode left me with a lingering concern that allegations about Mr Salmond could materialise at some stage.

It is reasonable to ask why, if I suspected the nature of what he wanted to speak to me about on 2 April, I nevertheless agreed to the meeting.

The answer is both political and personal.

I thought Mr Salmond may be about to resign from the SNP and that, as a result of this or other aspects of how he intended to handle the matter he was dealing with, the party could have been facing a public/media issue that we would require to respond to.

As Party Leader, I considered it important that I knew if this was in fact the case in order that I could prepare the party to deal with what would have been a significant issue.

There is also the personal aspect. Mr Salmond has been closer to me than probably any other person outside my family for the past 30 years, and I was being told he was very upset and wanted to see me personally.

To return to the meeting on 2 April 2018, although others were present, Mr Salmond initially asked to see me privately.

He advised me that he was being investigated under the Procedure and showed me a copy of the letter he had received.

Notwithstanding the suspicions I had harboured going into this meeting, I was shocked and upset by the reality of what I read.

He gave me his reaction to the complaints - in the main he denied them, though in relation to one matter he said that he had previously apologised and considered it out of order for it to be raised again - and said that it was his intention to seek a process of mediation between himself and the complainers.

It was also clear - contrary to what I had anticipated - that he did not intend to resign his party membership or do anything to make the matter public at that stage.

I made clear to him that I had no role in the process and would not seek to intervene in it.

I took no action as a result of this meeting.

Mr Salmond sent me a message on 22 April 2018 asking to speak to me by phone.

As previously advised to Parliament, I spoke to him by phone on 23 April (the substantive call took place early evening after a call in the morning had to be aborted due to poor signal).

He asked me if I would make the Permanent Secretary aware that I knew about the investigation and encourage her to accept his request for mediation.

I said that I was not willing to do so. A special adviser was in the room with me during this call, though not on the line.

Mr Salmond sent me a message on 31 May 2018 asking to meet. I did not agree to a meeting at that time.

Mr Salmond sent me a further message on 3 June 2018.

Both the tone and content of this message led me to conclude that legal action by Mr Salmond against the Scottish Government was a serious prospect.

I decided that I should make the Permanent Secretary aware of this, and I wrote to her on 6 June 2018.

At this juncture, it may be helpful to briefly set out for the Committee why I had not previously informed the Permanent Secretary of my contact with Alex Salmond or my knowledge of the investigation.

The relevant sections of the Ministerial Code (4.22 and 4.23) seek to guard against undisclosed outside influence on decisions that Ministers are involved in. It seemed to me that this was the opposite situation. This was a decision I was excluded from and it seemed to me that the risk of inadvertently and unintentionally influencing it would arise if those undertaking the investigation were aware of my knowledge of it.

The risk - even if theoretical and subconscious - would be that considerations of what I might think would influence the decisions taken.

Further, according to my reading of these sections of the Code, my contact with Alex Salmond - once notified - would have had to be made public. This could have compromised the confidentiality of the process.

My judgment, therefore, was that the best way to protect the process was not to make my knowledge of it known. This judgment changed when I had reason to believe that legal action against the government was being considered.

Having decided to write to the Permanent Secretary, I agreed to meet Mr Salmond and sent him a message to this effect on 5 June 2018.

The references in this message to 'what I need to do' and 'update' refer to my decision to write to the Permanent Secretary.

I intended to make him aware that I had done so and, in so doing, make clear again that I would not intervene in the process.

My letter to the Permanent Secretary advises her that I intended to do this. As advised to Parliament, this meeting took place in Aberdeen on 7 June 2018. No one else was present at this meeting.

My other reason for wanting to meet with him proactively at this stage was the SNP conference that was about to take place over the following days in Aberdeen. I assumed he would be there (though as it turned out, I don't think he did attend) and I didn't want to be 'cornered' by him during it.

Mr Salmond sent me a further message on 5 July 2018. I did not respond in any way to this message. The next contact between Mr Salmond and I was on 13 July 2018, which led to our third and final meeting being arranged for 14 July at my home.

By this time, I was again anxious - as Party Leader and from the perspective of preparing my party for any potential public issue - to know whether his handling of the matter meant it was likely to become public in the near future.

It was clear at the meeting that he was still seeking a process of arbitration around his concerns about the procedure.

He had formed a belief that it was me who was blocking arbitration. I told him that was not the case and I was not involved in the decision.

I also suggested to him that given their seriousness, he should engage on the substance of the complaints and not just focus on procedure.

Mr Salmond sent me further messages on 15 and 16 July 2018. The message of 15 July is Mr Salmond's interpretation of me saying that I was not involved in the decision.

On 16 July, I made the Permanent Secretary aware of the meeting on 14 July 2018 and the subsequent messages. I also made her aware of Mr Salmond's belief that I was blocking arbitration.

Given the risk of legal action, I did not want any suggestion that an opinion attributed to me (which I hadn't expressed) was influencing decisions I had no part in.

I reiterated to her that she must reach whatever decisions she considered appropriate and I did not seek to influence her in any way.

As advised to Parliament, I also spoke to Mr Salmond on the phone on 18 July 2018. I wanted to draw a line under our contact. I was also about to take a two day summer break and did not want him trying to contact me during it. I have not spoken to Mr Salmond since.

However, later on 18 July, he sent me a copy of a letter he had received from the Scottish Government. I did not respond to this message.

He sent me a further message on 20 July 2018. Again, I did not respond.

I have had no contact with Mr Salmond since.

ANNEX B

[22/04/2018, 20:31:29] Alex Salmond: it would be very helpful if I could call you on WhatsApp 10.30am and 12 noon tomorrow

[22/04/2018, 21:05:25] Nicola Sturgeon: I'll be in the car until 11 on way to Inverness - so 10.30 will be ok. I'll not be free again after that until 12.30/1. There will be others in car so I'll not be able to talk openly...it'll be later in day before I can be in private.

[22/04/2018, 22:03:57] Alex Salmond: In which case I will Phone just after 10.30am with update and we can perhaps speak properly later on.

[31/05/2018, 11:24:01] Alex Salmond: In Glasgow tomorrow - could we meet?

[31/05/2018, 11:39:09] Nicola Sturgeon: Tomorrow's very difficult - is it urgent?

[31/05/2018, 11:45:01] Alex Salmond: Next few days. I could do tomorrow evening or Monday from lunchtime onwards.

[31/05/2018, 11:46:29] Nicola Sturgeon: The only time I could possibly do tomorrow is around 4. Is it about what we spoke about before?

[31/05/2018, 11:56:46] Alex Salmond: Yes

[31/05/2018, 11:56:59] Alex Salmond: 4 is fine - same place?

[31/05/2018, 17:07:08] Nicola Sturgeon: Tomorrow is actually proving tricky given other stuff I've got on. I'm trying to juggle a couple of things - will confirm later/in morning if 4pm possible and if not suggest alternative.

[31/05/2018, 19:23:01] Alex Salmond: I suggest just two of us - I can leave you with some material to digest over weekend - Meeting itself need not take long but tomorrow would be best if poss.

[01/06/2018, 07:51:32] Nicola Sturgeon: Sorry but I just can't do today - I don't have time to get home given other stuff. Happy to speak on phone over weekend and see what else is possible.

[01/06/2018, 09:36:59] Alex Salmond: Phone not appropriate - there is material you need to see and assess privately. Can I come to you Sunday or very first thing Monday?

[01/06/2018, 13:37:54] Nicola Sturgeon: I'm not at home at weekend and in Aberdeen on Monday. In any event, I'd prefer a quick chat first to understand the purpose of giving me material. We've already spoken about why I think me intervening is not right thing to do. Happy to talk on what's app at some point over weekend.

[03/06/2018, 10:15:00] Alex Salmond: My recollection of our Monday 2 April meeting was rather different. You wanted to assist but then decided against an intervention to help resolve the position amicably. Now is different. I was intending to give you sight of the petition for JR drafted by senior counsel. You are a lawyer and can judge for yourself the prospects of success which I am advised are excellent. This will follow ANY adverse finding against me by the PS in a process which is unlawful. You are perfectly entitled to intervene if it is brought to your attention that there is a risk of your Government acting unlawfully in a process of which you had no knowledge. Indeed it could be argued that is your obligation under the Scotland Act is to ensure that all government actions are consistent with Convention undertakings

The JR will be rough for me since the hearing will almost certainly be made public but at least I will have the opportunity to clear my name and good prospects of doing so - but for the Government? One further thing to consider. Thus far we have been able to confine evidence offered to the general (and mostly ridiculous) matters. This has had the benefit of keeping everything well clear of current administration. When we go to Court we will have to produce evidence to demonstrate prior process (which incidentally the PS has admitted!). If you want to discuss privately then I can come to you in the North East on Monday.]

[05/06/2018, 14:02:58] Nicola Sturgeon: Hi - I have been considering your message and what I need to do in light of it. If you still want to meet, I can do tomorrow evening in Edinburgh and update you then. N

[05/06/2018, 19:24:32] Alex Salmond: Happy to meet - soonest I can get to Edinburgh is around 8.30. I take it this is totally informal, one to one.

[05/06/2018, 19:42:38] Nicola Sturgeon: Ok - happy for it to be one to one - will have to be either parliament or Bute, whatever you prefer. The alternative if its easier is Aberdeen on Thursday night - I'll be there from around 8, staying in hotel somewhere near beach ballroom I think.

[05/06/2018, 20:08:30] Alex Salmond: Yes Thursday much better, thanks. I'll be there for 8.30 to give you time to settle in.

[05/06/2018, 20:12:37] Nicola Sturgeon: Ok. It's the Hilton hotel at the beach. [05/06/2018, 20:17:58] Alex Salmond: Grand

[07/06/2018, 19:00:28] Nicola Sturgeon: You should go to the Platinum reception at the back of hotel later. There's a private room arranged there for us to meet in.

[07/06/2018, 19:07:45] Alex Salmond: OK thanks. Traffic was bad but now well on the way. Should arrive c 8.40 and will give 5 minute warning on approach.

[07/06/2018, 19:09:23] Nicola Sturgeon: I'm running late too - but should be there just before you

[07/06/2018, 19:14:01] Alex Salmond: OK shall we make it 8.50 so we are not rushing
[07/06/2018, 19:25:49] Nicola Sturgeon: I'm ok for as soon as you get there [07/06/2018, 19:36:24] Alex Salmond: Grand
[07/06/2018, 20:46:30] Alex Salmond: Now in Aberdeen 5 minutes or so

[05/07/2018, 21:18:40] Alex Salmond: Nicola. I have slept on the content of the latest letter from the PS rejecting arbitration. Two points I want to make to you privately. Firstly, the explanation given in the letter is that arbitration is rejected because the SG is confident in the legality of the process. With respect, that entirely misses the point. The SG may well believe it is lawful. My Senior Counsel believes it is unlawful. That's the whole point of the arbitration.

The legality will have to be resolved either in private (in a confidential and binding arbitration) or in public at the Court of Session. The SG, and you, have everything to gain from arbitration. If my legal advice is wrong, I will accept that and the current process proceeds. If the SG legal advice is wrong, you discover that without losing in a public court. Adopting an arbitration process also guarantees confidentiality for the complainers, regardless of what happens.

Secondly, the PS has now intimated that an FOI has been submitted. The SG response to that request is of the utmost importance. Confirmation of even the existence of a specific complaint will be sufficient to start a process which leads to the near certainty of these matters becoming public. My legal advice is that a "neither confirm or deny" response which avoids acknowledging the existence of any documents can be issued under section 18 of the FOI Act which covers S38 (1) (b) {personal information}. It is critical that this happens. There remains a way to resolve this but it requires the PS to be encouraged to accept that confidential arbitration offers the best solution and to ensure that the FOI is carefully handled. I hope you will do so but time is now very short.]

[13/07/2018, 11:01:08] Alex Salmond: Grateful for your message [REDACTED] Happy to meet privately. Understand you are away from Monday so given developments presumably this weekend best? I have material which it is important for you to see. I will happily come to you.

[13/07/2018, 11:22:38] Nicola Sturgeon: I'm supposedly on leave from Monday but not going away - I'll be at home so could do next week if that's easier (except Thursday/Friday). Weekend is a bit busy with one thing and another - late tomorrow afternoon probably only time that works. Let me know what you prefer.

[13/07/2018, 14:03:32] Alex Salmond: Great - can we make it tomorrow late afternoon then - I am just rearranging something and will confirm asap.

[13/07/2018, 15:13:10] Alex Salmond: Tomorrow confirmed for late afternoon. - give me your best time and place. Thanks.

[13/07/2018, 15:56:10] Nicola Sturgeon: It'll have to be my house - I should be home by 4 so that's best time. Just so you know, I have to go out again around 6.

[13/07/2018, 15:58:44] Alex Salmond: 4 it is then

[13/07/2018, 15:59:27] Nicola Sturgeon: Ok

[14/07/2018, 15:45:59] Alex Salmond: Ten minutes away

[15/07/2018, 22:42:44] Alex Salmond: Many thanks for making the time yesterday. I am grateful that you will correct the impression being given that you are against arbitration or that it is somehow against your interests. I know that you need to reflect further on how to progress things beyond that and am not blind to the difficulty of legal advice being suspicious of arbitration. I am genuinely at a loss as to what the downside is for anyone, complainers, SG or me or you. The reasons given to date have been meaningless or more recently just a misrepresentation of your position. If there are good legal reasons then surely they can be set out for you/us. I will wait to hear how you are able to proceed. I am also giving much thought to your advice and thinking deeply about how arbitration on process might open up the space and opportunity to address and resolve the underlying matters, as far as is possible, to everyone's satisfaction.]

[16/07/2018, 14:57:50] Alex Salmond: Just in from Duncan to me - for your eyes only

"Senior counsel for SG has just told us he is going to take instruction direct from PS on the question of what attitude he is to take to arbitration. This is exactly the point at which the FM's position supporting at least the exploration of arbitration can be most influential. Otherwise we are hitting a wall in discussions. Immediate clarification of her position with the PS is required. As in, immediately."]

[18/07/2018, 20:50:37] Alex Salmond: T: [REDACTED]

E: [REDACTED]

Mr Callum Anderson Levy and McRae Pacific House
70 Wellington Street GLASGOW
G2 6UA

Private and Confidential 18 July 2018

Dear Mr Anderson

Thank you for your recent letters, in which you have raised your concern about the fairness of the Scottish Government Procedure. I want, first of all, to assure your client that I am approaching these important issues with the greatest of care and with an open mind. It remains the view of the Scottish Government that our Procedure is fair and legally sound. We have ensured from the outset that your client had every opportunity to provide a statement of his recollection of the events described in the "causes for concern" set out in my letter of 7 March. We granted a number of extensions to the initial deadline for such a statement to be provided. Your client was also offered the opportunity to speak to the Investigating Officer directly but he declined to do so.

Your client has chosen not to provide a substantive response to the complaints made by Ms A and Ms B (causes for concern A – I) although he has made clear his denial that any harassment took place. Your letter of 26 April included quotations "in short none of the allegations are admitted" and "I categorically deny that I have ever harassed any civil servant".

Although you continue to express concern about the overall fairness and legality of the Procedure your letter of 26 April did include a substantive response to causes for concern J – K. That letter also identified 5 witnesses to be interviewed - limited to those causes for concern only.

Contact information for those witnesses was provided by you on 8 May. Witnesses were interviewed by the Investigating Officer and their statements were finally agreed by all parties by 28 June after a number of postponements and delays.

You have proposed arbitration in relation to the Procedure and explained why you consider it to be appropriate. The Scottish Government has explained in previous letters and in exchanges between legal representatives why we do not agree. However, for completeness and to ensure our position is understood we make the following points.

First, we consider that we have given your client a fair opportunity to address the complaints, and that the procedure which we have followed is a fair one.

- We do not consider that arbitration would be appropriate to the circumstances. This is an investigation of serious complaints made by civil servants involving a former Minister. Submitting the process to an external decision maker would not be appropriate.
- As the decision maker, I have to balance a range of interests, and to ensure a Procedure which is fair both to your client and to the complainers. Arbitration of the SG process would not involve the complainers.
- As decision maker I have a duty to bring the investigation to a conclusion as efficiently and timeously as possible. Arbitration would cause unavoidable further delay.
- However tightly a remit were drawn, it seems unlikely that it would be possible to separate the procedural points which you have raised from issues of substance or content in a way which would allow those procedural concerns to be addressed.

Your client has provided a substantive response to causes for concern J – K. However, it remains my view that his interests and those of the investigation as a whole would best be served by him providing a substantive response to each of the causes for concern – and it is a matter of regret that he has chosen not to do so.

Consequently I am offering your client, even at this late stage, a final opportunity to provide any further representations about the complaints made by Ms A and Ms B.

Given the time that has elapsed since first notifying your client of the investigation you must confirm if your client wishes to take up this opportunity no later than 11 am on 19 July. Any further representations must be received by 3 pm on Friday, 20 July if they are to form part of my consideration.

Should your client choose not to take up this final opportunity I shall proceed to consider the report on the basis of the information he has already provided and will write to you again to inform you of the outcome.

Yours sincerely

LESLIE EVANS

[18/07/2018, 20:52:21] Alex Salmond: As you see the time allowed is tomorrow morning at 11am

[20/07/2018, 22:37:18] Alex Salmond: A full rebuttal of all complaints went in by the deadline today. Let us see how it is judged.

ANNEX C

4 August 2020

Dear Convener

I refer to your letter of 7 July.

Please treat this covering reply and attached annexes as my response to the questions posed in your letter.

With regard to paragraph 5 of Annex B of your letter, noting that “the Committee and all participants must comply with the court order made by the Lord Justice Clerk, Lady Dorrian, on 10 March 2020”, I have excluded from this letter any information that, as far as I am aware, might disclose the identity of any of the complainers in HMA v AEA Salmond.

However, I do not know if my submission would pose a risk in ways I am not aware of, or if other evidence submitted would risk jigsaw identification.

Therefore, prior to publication of all or part of this submission, I would like assurance on the steps the Committee has taken to ensure that nothing in it, either on its own or taken together with anyone else’s evidence, would risk identification.

The Committee previously asked me to retain all information relevant to the Inquiry. I enclose at Annex B a transcript of WhatsApp messages between myself and Alex Salmond. This is the only information I hold relevant to the Committee’s Inquiry.

I have no objection, as regards my own interests, to the publication of these messages in full. However, I seek an assurance from the Committee that any issues relating to Alex Salmond’s data rights or legal privilege will be properly considered before publication, including whether his consent is required.

Subject to the above, I will be happy to discuss any aspect of my response with the Committee in oral session.

I have structured my response in line with your paragraph headings. Please note that any and all involvement I had in my capacity as First Minister in the Complaints Policy Development, Complaints Handling Procedure and Judicial Review - and any relevant documentation in respect thereof - will be included in the Scottish Government’s submissions to the Committee.

The information I provide in this response relates to my actions in a party/personal capacity. This includes my decision to advise the Permanent Secretary of information I acquired in my party/personal capacity, where I considered that the interests of the Scottish Government required it. I refer in this submission to the letter I wrote to the Permanent Secretary on 6 June 2018. A copy of this should be requested from the Scottish Government.

COMPLAINTS POLICY DEVELOPMENT

As a personal reflection and for context, the development of the Scottish Government's "Handling of harassment complaints involving current or former Ministers" (hereinafter referred to as "the Procedure") took place against the backdrop of the #MeToo movement, which started in late 2017 in the wake of allegations extending back over several years about certain high profile individuals.

The concerns being expressed globally at that time were that too many organisations did not have procedures in place that allowed allegations of sexual harassment to be raised or properly investigated; that women's voices were often not heard or listened to; that organisations too often closed ranks in defence of men accused of inappropriate behaviour; and that it could be particularly difficult for 'historic' allegations to be raised.

The media had also reported concerns about the prevailing culture in Holyrood.

The Scottish Government was just one of many organisations across the globe confronted with these questions at that time, and considering its procedures and culture in light of them.

You will also recall that a Scottish Government minister resigned in early November 2017 over concerns about sexually inappropriate conduct.

As First Minister, I wanted to ensure that the Scottish Government had robust procedures in place to allow any concerns or complaints by those in its employment to be properly and fairly considered, without fear or favour and regardless of the seniority or political affiliation of any individuals who might be the subject of such concerns or complaints.

My role as First Minister in the development of the Procedure will be set out in the Scottish Government's submission to the Committee. COMPLAINTS HANDLING PROCEDURE
Any involvement in my role as First Minister will be included in the Scottish Government submission on the handling of the complaints.

I provide further information in a personal/party capacity in Annex A. JUDICIAL REVIEW
The detail of my involvement in decisions associated with the Judicial Review will be set out in the Scottish Government's submission to the Committee.

MINISTERIAL CODE

The Committee is aware that I have made a self referral to the independent panel of advisers on the Ministerial Code.

However, I address the requests in this section in Annex A to this letter.

Annex B includes communications in the form of WhatsApp messages between me and Alex

Salmond.

My letter to the Permanent Secretary dated 6 June 2018 should be requested from the Scottish Government.

PARTY POLITICAL MATTERS

I had no communication with the SNP relevant to the subject matter of the Committee's inquiry, other than approving the party's public comments after the matter became public in August 2018.

My husband was obviously aware of Mr Salmond's presence in our home on 2 April and 14 July 2018, but he was not present at the meetings and I did not share the detail with him.

As I outline in Annex A, when I agreed to meet with Alex Salmond on 2 April 2018, I believed that what he was about to tell me may require a public response from the SNP. Indeed, I suspected that he may be about to resign from the SNP.

In the event, it was clear to me at the 2 April meeting that his approach to handling the matter was not likely to result in it becoming public at that stage.

Accordingly, there was nothing for me to alert the SNP to, and it was not appropriate for me to disclose the fact or detail of the complaints and investigation under the Procedure.

In relation to ensuring that there is a clear distinction between my role as First Minister and my role in the SNP, I have regard to the terms of both the MSP and Ministerial Codes of Conduct.

My Special Advisers abide by the terms of the Special Advisers' Code of Conduct and the Civil Service Code.

In relation to the question about Scottish Government communication and records, this is covered by Scottish Government procedures on the recording and retention of information.

The SNP communicates with its post holders in the normal ways - including meetings, emails and phone calls.

The safeguard to ensure this is distinct from government communications are the relevant Codes that MSPs, Ministers and Special Advisers are bound by.

To be clear, members of the public often email my SNP or MSP accounts about government business and I forward these to my ministerial private office.

On any other occasions when I email my ministerial private office or special advisers from my personal email - eg with diary queries or information requests - these will be to a Scottish Government email account and retained in line with standard procedures.

And all government business, no matter the platform/medium it is conducted on/through, is subject to Freedom of Information legislation. CULTURE

I had no general concerns at the time about Scottish Government culture from 2008-14, and certainly not about sexual harassment. However, government is a high pressure environment. Mr Salmond could be challenging to work for and, rightly, he demanded high standards. However, I was present on some occasions when tense situations had to be defused.

Certain matters that I have become aware of through the events of the last couple of years raise - retrospectively - some other concerns.

I have no general concerns about the culture of the Scottish Government now. However, I am not complacent about the potential for instances of inappropriate behaviour within a large organisation. That is why it is important to have clear and robust procedures in place which, subject to any views of this Committee on the Procedure, I believe to be the case.

I have no comment to make on the adequacy of the Civil Service Code. I give some personal reflection on the Ministerial Code in Annex A - however, the adequacy of it is a matter the independent panel will be able to consider.

CONCLUSION

In conclusion, I would like to add the following personal reflections.

The Committee will be considering the Scottish Government's handling of complaints raised under the Procedure. That is, of course, legitimate.

However, the Scottish Government would have had nothing to 'handle' had complaints not been raised about Alex Salmond's conduct.

It was the concerns raised about his conduct - an aspect of which, by his own admission, he apologised for - that gave rise to this matter.

In my view, when these complaints were raised, the Scottish Government had a duty to investigate them and the fact that a mistake was made in the conduct of the investigation does not change that fact. To have swept them under the carpet because of who they related to would have been wrong.

As far as my personal involvement is concerned, over the last couple of years, I have faced accusations of 'conspiring' against Alex Salmond and also of 'colluding' with him.

I reject in the strongest possible terms both of these suggestions.

Indeed it seems to me that what some want to present as 'conspiracy' is in actual fact my refusal to 'collude' or 'cover up'.

In what was a very difficult situation - personally, politically and professionally - I tried to do the right thing. Whether I always got it absolutely right is something I still reflect on, and the Committee will consider, but I sought all along to act in good faith and to strike the right balance of judgment given the difficult issues I was confronted with.

In the light of the #MeToo movement, I sought to ensure that the Scottish Government developed a process that allowed allegations of sexual harassment - including allegations of a historic nature - to be fully and fairly considered.

I did not do this *because* I had a concern (as set out in Annex A) that allegations about my predecessor could materialise. But nor did I, in any way, allow such concern to lead me to limit the scope of the procedure.

I agreed to meet a friend of 30 years when I was told he was in distress and wanted to talk to me about a serious matter.

And it is certainly the case that I was anxious to prepare my Party as far as possible for an issue that, at different stages, I thought could be about to become public.

However, I did not seek to prevent or influence the proper consideration of the complaints.

For the sake of the complainers, the Scottish Government and indeed Alex Salmond himself, I acted in a way that I judged would best protect the independence and confidentiality of the investigation.

However, when I became aware of a serious risk of legal action against my government, I felt I had a duty to make the Permanent Secretary aware of it.

My view throughout was that complaints must be properly and fairly considered, no matter who the subject of them might be, or how politically inconvenient the investigations may be.

And that remains my view, even though the circumstances and consequences of this particular investigation have caused me - and others, in many cases to an even greater extent - a great deal of personal anguish, and resulted in the breakdown of a relationship that had been very important to me, politically and personally, for most of my life.

Lastly, since August 2018 I have taken care to say nothing that could compromise other proceedings, including the Committee's inquiry - even though that has meant being unable to say more about my own actions or challenge misrepresentations about them.

Yours Sincerely

NICOLA STURGEON

From: [REDACTED]@gov.scot>

Sent: 09 October 2020 14:20

To: [REDACTED] Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>

Cc: Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; [REDACTED]

[REDACTED]@gov.scot>; [REDACTED]
McAllister C (Colin) <Colin.McAllister@gov.scot>; [REDACTED]
[REDACTED]

Subject: Official sensitive- submission on legal advice for Mr James Hamilton

P/S DFM
[REDACTED]

Please see attached note seeking views on:

- An approach to sourcing legal advice for the independent adviser, Mr Hamilton; and
- [REDACTED]

Happy to discuss,

Best wishes,
[REDACTED]

[REDACTED] | Secretariat to the Independent Advisor under the Ministerial Code | Please contact me on Skype or on [REDACTED].

Note from Permanent Secretary to FM

First Minister

Strictly private and confidential

Your note of 6 June informed me that the former First Minister, Alex Salmond had made you aware that an investigation was being conducted by the civil service into two formal complaints by civil servants about his conduct in office.

[Redacted] [Redacted]

In line with the Procedure, I will report the outcome of the investigation and decisions about the next steps to be taken by the Scottish Government to you once I have informed the complainers and former First Minister of my conclusions.

Leslie Evans

17 August 2018

[REDACTED]
Secretariat to Independent Adviser
October 2020

Deputy First Minister
[REDACTED]

INDEPENDENT ADVISER ON THE MINISTERIAL CODE

Purpose

To seek views on:

An approach to sourcing legal advice for the independent adviser, Mr Hamilton; and
[REDACTED]

Timing

Urgent. A response by 13 October would be helpful as it would allow the Secretariat to start work on sourcing legal advice for Mr Hamilton.

Background

Mr Hamilton was appointed as the independent adviser who would lead on the First Minister's self-referral under the Ministerial Code. This work was paused due to Coronavirus and resumed in early August 2020.

I am providing secretariat support to Mr Hamilton, as required. I have had no prior involvement with any aspects of the issues covered by Mr Hamilton's remit (copy at Annex A).

Legal Advice to Mr Hamilton

Mr Hamilton has requested that he has access to legal advice during the referral process, and in preparing his final report. Mr Hamilton is not familiar with the Scottish legal system. In collecting evidence and producing his report he will need to navigate the relevant Court orders and data protection issues. I think his request is therefore reasonable and suggest this support should be made available as soon as possible.

I have explored whether SGLD could provide the necessary legal support. However, given that Mr Hamilton is independent of the Scottish Government, SGLD consider that it would not be appropriate to provide legal support to Mr Hamilton. Existing procurement frameworks for legal services can only be used by those included on the framework, which in this case would mean that Scottish Ministers or an alternative intermediary would need to procure legal advice on behalf of Mr Hamilton. Alternatively, Mr Hamilton could source his own legal advice and claim the costs from the Scottish Government. The secretariat could assist Mr Hamilton to identify a suitable firm, using as a benchmark the same criteria for inclusion within SG legal services procurement frameworks. This would help ensure value for money while being completely independent from Scottish Ministers. It is likely that up to 10 days of legal advice may be necessary to support this work, with costs somewhere between £7,000 and £25,000.

Are you content for Mr Hamilton to source his own advice, and for costs to be incurred, with VFM considerations managed by reference to the SG's legal services framework?
[REDACTED]

[REDACTED]

Conclusion

Can you please advise me:

If you are content that we support Mr Hamilton to obtain his own legal advice with the costs being met by the Scottish Government; and

[REDACTED]

[REDACTED]

October 2020

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- [REDACTED]
- David Rogers
- [REDACTED]
- [REDACTED]
- Colin McAllister

Annex A: Remit

The remit for the referral is to:

1. Review any relevant documentation relating to the meetings and discussions listed above.
2. Interview any Minister or official of the Scottish Government, including Special Advisers, who may have any knowledge of the facts and content of the meetings and discussions, to assess whether the Ministerial Code is engaged and, if so, whether the terms of the Code have been complied with.
3. Interview any relevant person outwith the Scottish Government, including the former First Minister, Alex Salmond, who may have information relating to the facts and content of the meetings and discussions.
4. Determine if there is any evidence that the First Minister attempted to use information discussed during those meetings and discussions to influence the conduct of the investigation being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure.
5. Provide the Deputy First Minister with a report setting out the findings and conclusions with regard to:
 - i. whether the Ministerial Code is engaged regarding the meetings and discussions;
 - ii. whether there has been any breach of the Code and the nature of any such breach; and
 - iii. if a breach has occurred, advice on the appropriate remedy or sanction.
6. The Independent Adviser is further invited to consider and offer views on whether the Ministerial Code might need revision to reflect the terms of the Procedure and the strict limitations it places on the involvement of the First Minister in cases which fall to be considered under the Procedure.

From: [REDACTED]@gov.scot> **On Behalf Of** Deputy First Minister and Cabinet Secretary for Education and Skills

Sent: 12 October 2020 12:53

To: [REDACTED]@gov.scot>; [REDACTED]
[REDACTED]@gov.scot>; Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>

Cc: Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; [REDACTED]

[REDACTED]@gov.scot>; [REDACTED]

[REDACTED]; McAllister C (Colin) <Colin.McAllister@gov.scot>; [REDACTED]

[REDACTED]@gov.scot>

Subject: RE: Official sensitive- submission on legal advice for Mr James Hamilton

Hi [REDACTED]

The DFM agrees that Mr Hamilton should be able to obtain legal advice and SG should pay for it. [REDACTED]
[REDACTED]

Thanks

[REDACTED]

[REDACTED] | Interim Private Secretary to John Swinney MSP, Deputy First Minister and Cabinet Secretary for Education and Skills | The Scottish Government | Web: www.gov.scot
| Tel: [REDACTED] | Mob: [REDACTED] | Email: DFMCSE@gov.scot

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From: [REDACTED]@gov.scot>

Sent: 09 October 2020 14:20

To: [REDACTED]@gov.scot>; Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>

Cc: Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; [REDACTED]

[REDACTED]@gov.scot>; [REDACTED]

[REDACTED]; McAllister C (Colin) <Colin.McAllister@gov.scot>; [REDACTED]

[REDACTED]
Subject: Official sensitive- submission on legal advice for Mr James Hamilton

P/S DFM
[REDACTED]

Please see attached note seeking views on:

- An approach to sourcing legal advice for the independent adviser, Mr Hamilton; and
- [REDACTED]

Happy to discuss,

Best wishes,

[REDACTED]

[REDACTED] | Secretariat to the Independent Advisor under the Ministerial Code | Please
contact me on Skype or on [REDACTED]

Re: Quick update

From: James Hamilton <[REDACTED]@[REDACTED]>
To: [REDACTED]@gov.scot>
Date: Mon, 12 Oct 2020 14:37:32 +0000

Yes, fine.

On Mon, 12 Oct 2020 at 14:42, wrote:

Would 1pm tomorrow be ok?

From: James Hamilton <[REDACTED]@[REDACTED]>
Sent: 12 October 2020 11:00
To: [REDACTED]
Subject: Re: Quick update

Hi [REDACTED]

I was able to open the one you sent at 14.10 - the third attempt in plain text. Not the earlier two.

Tomorrow is fine to talk. I have a Skype meeting between 10.00 am and 11.00 am otherwise I am available.

James

On Mon, 12 Oct 2020 at 10:16, <[REDACTED]@gov.scot> wrote:

Hi James,

Quick update- I've received two more written responses, I'm intending to send them over later. Were you able to read the plain text ones I sent on Friday?

Would it be ok to speak tomorrow? Before then I will send over a contribution to the letter, and a response to the Committee, as discussed on Friday.

I've also attached a link to a sky news interview the First Minister did yesterday morning which may be of interest. There was extensive media coverage of this- I can pull together a summary of the main articles if that would be helpful?

<https://news.sky.com/story/nicola-sturgeon-reads-out-private-alex-salmond-messages-to-dispel-conspiracy-theories-12101561>

Best wishes,



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Private- item of correspondence sent to [REDACTED]
[REDACTED]

From: [REDACTED] [REDACTED]@gov.scot>
To: [REDACTED]
Date: Mon, 12 Oct 2020 13:51:02 +0000

Dear Sir or Madam,

I am emailing to enquire as to whether an item of correspondence, sent to [REDACTED]
[REDACTED] for the attention of Mr Geoff Aberdein, has been received and
processed.

The letter was sent on 8 September 2020 and has been signed for as delivered,
although I am aware that due to the pandemic Royal Mail are not seeking
customer signatures so this probably means the postman has confirmed it was
delivered.

I wondered if you would be able to confirm if the letter has been received and
passed to Mr Aberdein?

Happy to discuss.

Best wishes,

[REDACTED] [REDACTED]

From: [REDACTED]
Sent: 10 December 2020 11:48
To: David Clegg <[REDACTED]>
Subject: RE: FAO James Hamilton

Dear David Clegg,

Many thanks for your email. Please accept my apologies for the delay in written correspondence reaching you.

I have passed your response to Mr Hamilton for consideration.

Best wishes,

[REDACTED]

From: David Clegg <[REDACTED]>
Sent: 03 December 2020 22:47
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: FAO James Hamilton

RE: SCOTTISH MINISTERIAL CODE: FIRST MINISTER'S SELF-REFERRAL

Mr Hamilton,

Apologies for the delay in responding. I did not receive your email and, as our entire organisation is currently home working, only received the paper copy of your inquiry today.

I can confirm that I contacted Geoff Aberdein on January 14, 2019 to ascertain if he was the "intermediary" who had set up the meeting between Nicola Sturgeon and Alex Salmond on April 2, 2018, at the First Minister's home.

He confirmed this was the case and subsequently sent me an email with more details. Mr Aberdein's statement volunteered the information that [REDACTED]

[REDACTED]

[REDACTED]

I have nothing further of note to add about my interactions with Mr Aberdein that would be relevant to your inquiry [REDACTED]

[REDACTED]

In terms of the remit of your inquiry, the only other observation I would make is that during my extensive investigations into these matters in January 2019 nobody I spoke to referred to the meeting between Ms Sturgeon and Mr Aberdeen on March 29, 2018. The first I learnt of this meeting was during Mr Aberdeen's testimony in the criminal trial of Mr Salmond.

Sorry I can't be of more help. If you require any further information from me please do not hesitate to get in touch via this email address.

Yours sincerely,

David Clegg

David Clegg
Editor
The Courier

**DC Thomson & Co
Ltd**
2 Albert Square
Dundee
DD1 1DD

Tel: [REDACTED]
Mob: [REDACTED]
www.thecourier.co.uk

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From: [REDACTED]
Sent: 10 December 2020 11:43
To: Kevin Pringle [REDACTED]
Subject: RE: Personal- correspondence from James Hamilton

Dear Kevin Pringle,

I am emailing to confirm that your response was passed to Mr Hamilton. Please accept my apologies for the delay in acknowledging your response.

Best wishes,

[REDACTED]

From: Kevin Pringle [REDACTED]
Sent: 27 November 2020 11:59
To: [REDACTED] <[\[REDACTED\]@gov.scot](mailto:[REDACTED]@gov.scot)>
Subject: Re: Personal- correspondence from James Hamilton

Dear Mr Hamilton

EMAILED VIA [REDACTED]

Thank you for your letter of 25 November.

I can confirm that I took part in the telephone conversation described by Geoff Aberdeen. [REDACTED]

[REDACTED] Mr Aberdeen was seeking advice as to whether to inform Mr Salmond, and it was agreed that it was fair he should do so. [REDACTED]

[REDACTED] He did not have detailed knowledge of the allegations that he was able to share, which I learned of subsequently from Mr Salmond himself, as well as from information as it entered the public domain.

I hope that this is of assistance.

Best wishes

Kevin Pringle

From: [REDACTED] <[\[REDACTED\]@gov.scot](mailto:[REDACTED]@gov.scot)>
Date: Wednesday, 25 November 2020 15:14
To: Kevin Pringle [REDACTED]
Subject: Personal- correspondence from James Hamilton

Dear [REDACTED]

Please see attached correspondence from James Hamilton, independent advisor on the Ministerial Code.

In order to ensure that the current Covid restrictions do not delay this correspondence, it has been sent by email in the first instance. A duplicate hard copy will also be sent by post.

Best wishes,

[REDACTED]

[REDACTED] | Secretariat to the Independent Advisor under the Ministerial Code
| Please contact me on Skype or on [REDACTED]

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Sent: 27 November 2020 11:59
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: Re: Personal- correspondence from James Hamilton

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[REDACTED] He did not have detailed knowledge of the allegations that he was able to share, which I learned of subsequently from Mr Salmond himself, as well as from information as it entered the public domain.

I hope that this is of assistance.

Best wishes

Kevin Pringle

From: "[REDACTED]@gov.scot" <[REDACTED]@gov.scot>
Date: Wednesday, 25 November 2020 15:14
To: Kevin Pringle <[REDACTED]>
Subject: Personal- correspondence from James Hamilton

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[REDACTED]

[REDACTED]

[REDACTED]

██████████ | Deputy Private Secretary to John Swinney MSP | Deputy First Minister of Scotland and Cabinet Secretary for Education & Skills | Scottish Government | St Andrew's House | Edinburgh | EH1 3DG | Tel: ██████████ | E: DFMCSE@gov.scot

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[No Subject]

From: James Hamilton <[REDACTED]@[REDACTED]>
To: [REDACTED]@gov.scot>
Date: Tue, 13 Oct 2020 11:58:44 +0000
Attachments: Salmond letter.docx (8.42 kB)

Draft herewith

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Draft letter to Mr Salmond

Acknowledgements, etc.

Regarding the first point, I note what you say about representing yourself. I will, of course, have no control over what you put in your submissions. I can confirm that I will do my best to ensure that nothing in my report will be in breach of any applicable court orders.

In relation to your second point, thank you for drawing my attention to the two court interlocutors attached to your letter. I would indeed appreciate receiving a copy of the letter from the Crown Office which you refer to. Again, as I have just stated, I will do my best to ensure that nothing in my report will be in breach of any applicable court orders.

On the third point, as you will know, James Hynd's role as head of Cabinet Secretariat includes supporting Ministers in matters relating to the Ministerial Code. On that basis, Mr Hynd supported the Deputy First Minister and me in establishing the referral I have been asked to undertake.

Mr Hynd has stepped away from the process and [REDACTED] [REDACTED] has been appointed as Head of Secretariat Support to support my work as I require. I can confirm therefore that James Hynd will not play any role in relation to the day to day conduct of the inquiry or in the finalisation of my report and any recommendations that I may make.

I note your comment concerning my remit. Considering that the principal allegation I am asked to consider concerns an alleged breach of the Ministerial Code in the First Minister's failure to record contacts with you it seems to me entirely logical to ask the question whether the First Minister was in fact involved in any way in the Scottish Government investigation. In seeking to answer the questions asked in the referral I will of course have to consider any relevant surrounding circumstances. At this stage it would be premature to speculate about whether any change in my remit might at some stage become necessary or appropriate and I propose to concentrate my efforts on answering the questions asked in the referral.

Scottish Ministerial Code

From: Geoff Aberdein [REDACTED]
To: [REDACTED]@gov.scot>
Date: Tue, 13 Oct 2020 11:47:07 +0000

FAO James Hamilton

Dear Mr Hamilton

I have today received your letter of 8 September concerning the First Minister's self-referral under the Ministerial Code. [REDACTED] and, given the current restrictions on employees, it only came to my attention today.

I am, of course, willing to assist your enquiries but I would welcome a call with you in the first instance to discuss the best way for me to do this.

Perhaps you or your team can contact me using this email address to arrange this?

If there is any requirement for you to send me hard copy information going forward please do so by sending it to the following address:



I look forward to hearing from you.

Best wishes

Geoff Aberdein

Sent from my iPad

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From: James Hamilton [REDACTED]
Sent: 16 October 2020 15:24
To: [REDACTED]@gov.scot>
Subject: Re: FW: James Hamilton- Ministerial code referral

Might be useful to have a quick word.

On Fri 16 Oct 2020 at 15:12, wrote:
Hi James,

I've now had confirmation Mr Ross would be available [REDACTED]
[REDACTED]

Are you happy for me to proceed to instruct him on your behalf?

Best wishes,

[REDACTED]

From: Sheena Hume <sheena.hume@Advocates.org.uk>
Sent: 15 October 2020 14:52
To: [REDACTED]
Subject: RE: James Hamilton- Ministerial code referral

Hi [REDACTED]

Mr Ross has confirmed that if all that's required before 30 October is legal input/comment [REDACTED] he would be able to accommodate that.

Please advise if you intend to proceed to instruct. If you are able to advise who any future fee note should be directed to that would assist with setting up a case file at my end. I note you've advised Jennifer that the costs will be met the by Scottish government.

Kind regards.
Sheena

Sheena Hume | Deputy Advocates' Clerk | Ampersand Advocates | 0131 260 5809 |
ampersandadvocates.com

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Re: Reply to Mr Aberdeen

From: James Hamilton <[REDACTED]@[REDACTED]>
To: [REDACTED]@gov.scot>
Date: Fri, 16 Oct 2020 14:33:14 +0000

Letter is OK. I would add a request to do this asap as I am anxious to complete my enquiries and report.

James

On Thu, 15 Oct 2020 at 16:46, wrote:

Ah, ok- that's [REDACTED] so that's probably the issue. I've copied the text of the reply to Mr Aberdeen's email below as it isn't sensitive.

Dear Mr Aberdeen,

Thank you for your email and apologies for the length of time it has taken for the letter to reach you. [REDACTED]

[REDACTED] I completely understand that the current Covid restrictions have meant that your opportunities to receive the letter are currently more limited than usual.

Mr Hamilton is happy to provide clarification on his letter and the work he is undertaking, but would prefer to do so in writing as this ensures there is a record of the discussions. Would you be able to provide questions in writing for Mr Hamilton's consideration?

Best wishes,

[REDACTED]

From: James Hamilton <[REDACTED]@[REDACTED]>
Sent: 15 October 2020 16:44
To: [REDACTED]
Subject: Re: Reply to Mr Aberdeen

I couldn't open the first attachment.

James

On Thu, 15 Oct 2020 at 10:37, <[REDACTED]@gov.scot> wrote:

Dear James,

Please see attached short response to Mr Aberdeen's email- it's written from my perspective so may need adjusting.

I've attached a link to an introduction to FOI in Scotland- there are links to an introduction document I have also attached, and also more detailed explanations of things like exemptions.

<https://www.itspublicknowledge.info/Law/FOISA.aspx>

Jackie Baillie MSP has lodged a number of parliamentary questions concerning the Geoff Aberdeen meeting- I've attached a link.

<https://www.parliament.scot/parliamentarybusiness/28877.aspx?SearchType=Simple&DateChoice=0&MSPIId=1783&SortBy=DateSubmitted&ResultsPerPage=10>

Various other things to follow later today!

Best wishes,



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From: James Hamilton [REDACTED]
Sent: 19 October 2020 09:55
To: [REDACTED]@gov.scot>
Subject: Re: FW: Mr James Hamilton

OK

On Sun 18 Oct 2020 at 13:24, wrote:
Further correspondence from Mr Salmond with an additional question to consider. If you think it would be appropriate, I will send a short email on Monday confirming you have received the correspondence, are considering the questions posed, and will respond in due course.

From: Alex Salmond
Sent: 17 October 2020 12:34
To: [REDACTED]
Subject: Re: Mr James Hamilton

Mr James Hamilton
Independent Adviser on The Scottish Ministerial Code.

17th October 2020

Dear Mr Hamilton

Further to my letter of 8th October I await an answer to the questions posed or an acknowledgement of the email. Could you ask your staff to provide this?

I am now in receipt of several press queries on whether I have been in communication with you. My practice with the Parliamentary Committee has been to "no comment" but draw attention to the publication of correspondence. However, I doubt that it is your intention to publish correspondence and therefore I would wish your guidance on how to reply to these questions.

On which subject I enclose a letter which my lawyers sent to the Parliamentary Committee on 14th October, which is clearly relevant to your remit, however it be defined.

Yours sincerely

The Rt Hon Alex Salmond

Appendix 1

10/10

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

On 6 Oct 2020, at 22:28, Alex Salmond <[REDACTED]> wrote:

Mr James Hamilton
Independent Adviser on the Scottish Ministerial Code

6th October 2020

Dear Mr Hamilton,

Thank you for your letter of 8th September.

I do indeed have information which will be of assistance to your enquiries and am happy to assist you if I can.

However I would like to accept your offer of clarification on your request and ask first for answers to the following points;

Firstly, I am prepared to represent myself in presenting you with evidence. I am a private individual and simply cannot afford to hire further legal representation as my lawyers are fully occupied dealing with the Scottish Parliamentary Inquiry. Vast sums of public funds have already been expended by Scottish Government officials in

legal representation in this process. I am also informed that other witnesses are relying on their political party to finance their legal representation. I will represent myself and am therefore in no position to accept responsibility as to whether my submissions are in line with legal requirements as you suggest in your letter. That will require to be your responsibility and I will be grateful if you could now confirm this.

Secondly, on a related point, the remit drawn by the Deputy First Minister refers to the anonymity orders drawn up by the “court in the criminal proceedings”. I would draw your attention to the rather more relevant ruling of Lord Woolman in the civil proceedings of 8th October 2018. This was sought by my counsel and as I recall the Scottish Government were not even represented by counsel at that hearing. Also relevant would be the interlocutor of Lord Pentland of January 8th 2019 after concession of the Judicial Review, where certain Scottish Government documents were reduced by the Court as the product of an unlawful process. For ease of reference I have copied you both of these court interlocutors. Please confirm that you shall not be relying on, or accepting into evidence, said unlawful documents as any part of your enquiries.

You may also be aware that my solicitors have been informed by letter from the Crown Office that if they present or even describe to the Parliamentary Committee information gained in disclosure in the criminal proceedings they will be liable to prosecution. I am happy to provide you with this letter if you wish. Please confirm if this threat applies to your enquiry because there are indeed relevant documents under this restriction. However, given that much of this documentation was obtained by Crown search warrant from the Scottish Government it would be open for the Government to supply you with it. Your difficulty is that you do not know what it is and I am currently debarred from informing you.

Thirdly, I understand from the Parliamentary Committee hearings in answer to a question from Ms Jackie Baillie that the civil servant who has been allocated responsibility for leading support for your enquiry is Mr James Hynd. However Mr Hynd was himself deeply involved in the Scottish Government’s unlawful complaints procedure. Indeed he claimed under oath at both the Commission which was required as part of the Judicial Review in December 2018 and in front of the Parliamentary Committee last month to be the original author of the policy. I do not dispute Mr Hynd’s personal integrity although I note he was forced to write to the Committee to correct an impression he had unwittingly given about me in his evidence. However, please clarify his status and position in your enquiry given his prior involvement in this matter.

Fourthly, the remit given to your investigation by the Deputy First Minister lays a surprising stress on whether she interfered in the Scottish Government investigation. It might even be suspected that this remit has been set up as a straw man to knock down. There is no general bar on Ministers intervening in a civil service process of which I am aware and indeed there are occasions when Ministers are actually required by the code to intervene to correct civil service behaviour.

What I wish to know is whether matters which, by contrast, are specified in the Ministerial code such as the primary responsibility of not misleading Parliament

(contrary to 1.3 (c) of the code), such as the failure to act on legal advice suggesting the Government was at risk of behaving unlawful (contrary to 2.30 of the code), and such as the Ministerial failure to ensure civil servants gave truthful information to parliament (contrary to 1.3 (e) of the code) will have at least equal status in your deliberations or are you confined to the political remit which you have been set? If your enquiry has been confined by Ministers then please tell me if you have the authority to expand that remit unilaterally? If not, will you seek the authority of those in the Scottish Government who set the remit to expand it into these, and other, areas?

Finally since the Parliamentary Committee has demanded full transparency and expressed an interest in your deliberations I have copied them into this email.

As I am answering your enquires personally please direct all future correspondence to me directly at [REDACTED]

Yours faithfully

The Rt Hon Alex Salmond

Sent from my iPad

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